

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 12347-18

AGENCY DKT. NO. 2019-28705

**B.R. ON BEHALF OF C.R.,**

Petitioner,

v.

**MOUNT OLIVE TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**B.R.**, o/b/o **C.R.**, petitioner, pro se

**Alison L. Kenny**, Esq., for respondent (Schenck, Price, Smith & King, LLP attorneys)

Record Closed: September 4, 2018

Decided: September 4, 2018

BEFORE **LESLIE Z. CELENTANO**, ALJ:

**STATEMENT OF THE CASE**

On August 24, 2018, Petitioner B.R. filed a request for emergent relief with the New Jersey Department of Education, Office of Special Education. Petitioner requested an emergent order placing C.R. back in the District, at Mount Olive High School.

On August 27, 2018, the matter was transmitted to the Office of Administrative Law (OAL). The matter was heard on September 4, 2018, at which time the record closed.

## **FACTS**

Based on the relevant documents and evidence I **FIND** as **FACT**:

C.R. is a rising 12<sup>th</sup> grade student who is eligible for special education and related services under the classification of “emotionally disturbed.” C.R. currently attends a behavior disabilities program at Montgomery Academy (“Montgomery”), in accordance with her most recent IEP. Montgomery Academy is a State approved private school for students with disabilities which C.R. has attended since April 30, 2018. She also participated in the extended school year (ESY) at Montgomery, which also provides her with group and individual counseling as related services.

During the 2017-2018 school year, C.R. was enrolled in the District’s behavior disabilities program at Mount Olive High School. At a December 11, 2017, IEP meeting, it was agreed that as a result of the behaviors C.R. was demonstrating, a change in placement was necessary. C.R. was placed on home instruction while an appropriate out-of-district placement was sought. Thereafter, on February 5, 2018, C.R. was placed at Shepard Preparatory High School (“Shepard”), a State approved private school for students with disabilities. At a March 6, 2018 IEP meeting to discuss C.R.’s progress at Shepard, it was agreed that notwithstanding some ongoing difficulties, she should remain there and continue with counseling. Soon thereafter, however, C.R.’s behavior deteriorated and on March 15, 2018 Shepard terminated her placement.

C.R. was again placed on home instruction pending the location of another appropriate out-of-district placement. On April 30, 2018, C.R. began attending Montgomery, and has been successful in that placement. At a review meeting held on June 11, 2018, C.R.’s progress at Montgomery was reviewed, and an IEP was developed. This is the most recent IEP and continues C.R.’s placement at Montgomery through June 2019.

Petitioner seeks to have C.R. returned to the District, to attend Mount Olive High School for her senior year. Petitioner asserts that she pays 2/3 of her income to the

municipality to educate her daughter, and that her taxes go up every year, and C.R. should be able to attend school in Mount Olive, close to home. She stated that C.R. needs to “know her community;” and that if she doesn’t attend the high school she won’t get invited to class reunions, and should be able to go to those reunions. She testified that C.R. has been on multiple different medications, and that her doctors wanted feedback from the District as to how the medications were affecting C.R. at school; and that the District did not cooperate in that regard. Finally, she stated that she believes the District is being vindictive because she fought with them over her son Tommy’s education as well.

Respondent maintains that petitioner has not satisfied the criteria for emergent relief.

### **DISCUSSION AND CONCLUSIONS**

The standards that must be met by the moving party in an application for emergent relief are embodied in N.J.A.C. 6A:14-2.7(r)–(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132–34 (1982). Emergency relief may be granted if the judge determines:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying petitioner’s claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.

[N.J.A.C. 6A:14-2.7(s)(1).]

“Each of these factors must be clearly and convincingly demonstrated” by the moving party. Waste Mgmt. of N.J. v. Union County. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

Considering the above factors for emergent relief, I **CONCLUDE** that petitioner does not satisfy the four criteria. Specifically, petitioner does not satisfy the first prong required for relief because she did not clearly and convincingly demonstrate C.R. will suffer irreparable harm, indeed there has been no demonstration that C.R. will suffer any harm if she continues in her current IEP program and placement at Montgomery. B.R. asserts that C.R. “deserves the opportunity” to return to Mount Olive because she is “stepping up” however both the IEP team and petitioner agreed that the in-district placement was no longer meeting C.R.’s needs and that a change in placement was necessary.

Additionally, petitioner has not met the criteria of demonstrating a likelihood of success on the merits of the underlying claim. Petitioner has presented neither expert opinion nor conclusive data to show that the plan in place fails to offer a free appropriate public education. The placement sought is not part of C.R.’s current IEP, and conflicts with the December 2017 determination by the IEP Team that the programs available in-district are unable to meet C.R.’s needs.

Under the facts and circumstances presented, further analysis is not required because petitioner is unable to meet all four criteria required for emergent relief.

Therefore, I **CONCLUDE** that petitioner has not proven that C.R. will be irreparably harmed if emergent relief is not granted; and further **CONCLUDE** that petitioner has not demonstrated a likelihood of prevailing on the merits.

Accordingly, I **CONCLUDE** that petitioner has not established the necessary criteria for emergent relief, and that the petition in this matter should be dismissed.

### **ORDER**

Petitioner’s request for emergent relief is **DENIED**. Accordingly, it is hereby **ORDERED** that the petition for emergent relief is hereby **DISMISSED**.

This decision on application for emergency relief resolves all of the issues raised; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C.A. § 1415(i)(2). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

September 4, 2018

DATE

LESLIE Z. CELENTANO, ALJ

Date Received at Agency:

September 4, 2018

Date Mailed to Parties:

September 4, 2018

dr