

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 15609-14

AGENCY DKT. NO. 2015 22033

J.G. on behalf of J.G.,

Petitioner,

v.

**HAMILTON TOWNSHIP BOARD
OF EDUCATION AND MERCER COUNTY
TECHNICAL SCHOOLS,**

Respondents.

J.G. on behalf of J.G., petitioner, pro se

Michael A. Pattanite, Esq., for respondent Hamilton Township Board of Education (Lenox, Socey, Formidoni, Giordano, Cooley, Lang & Casey, attorneys)

R. Taylor Ruilova, Esq., for respondent Mercer County Technical Schools (Comegno Law Group, attorneys)

Record Closed: December 23, 2014

Decided: December 23, 2014

BEFORE **LISA JAMES-BEAVERS**, ALJ:

STATEMENT OF THE CASE

Petitioner J.G. (petitioner) on behalf of student J.G. seeks emergent relief from respondents Hamilton Township Board of Education and Mercer County Technical Schools Board of Education (MCTS) in the form of returning J.G. to the Carpentry program that he began in September at the Assunpink Center of MCTS. Petitioner also seeks assistance to catch up on missed school work.

PROCEDURAL HISTORY

Petitioner initially filed a request for mediation. That request was later converted to a petition for due process and emergent relief. On December 5, 2014, MCTS filed a Notice of Motion to Dismiss in Lieu of Answer. On December 8, 2014, the Hamilton Board filed a letter brief in opposition to the request for emergent relief.

The parties appeared before me on December 8, 2014 to argue the request for emergent relief. The parties were able to negotiate a settlement whereby MCTS was willing to create a special program for J.G. The terms of the agreement were placed on the record, but petitioner had reservations about not pursuing all of the relief that she requested. The Hamilton Board agreed to draft the agreement and give it to her to sign with the intent that it would be placed on the agenda of the December 16, 2014 Board meeting. As of December 16, 2014, petitioner had not signed the agreement.

I held a telephone conference with petitioner and counsel on December 23, 2014, to inquire as to the status of the settlement. At that time, petitioner indicated that she had not had chance to concentrate on the settlement agreement because her son's health had declined and his health was paramount. Because petitioner did not indicate that she intended to sign the agreement, I told her that I would issue a decision on the emergent relief application. Mr. Ruilova explained to her on behalf of MCTS that J.G. would not be able to start the program in January that MCTS was willing to craft for him if she did not sign the agreement. Petitioner said she understood. I now **DENY** the motion. Because petitioner is not receiving the requested relief, I am declining to rule

on MCTS's motion to dismiss at this time and that motion will be decided by the judge who is assigned the due process petition.

FACTUAL DISCUSSION

J.G. is an eleventh grade student (date of birth August 29, 1997) in the Hamilton Township School District (District) who is entitled to special education services under the Individual with Disabilities in Education Act, 20 U.S.C. 1400 et seq. and N.J.A.C. 6A:14-1 et seq. under the category multiply disabled. MCTS is a county vocational and technical school that accepts students who reside in school districts within Mercer County and the surrounding areas.

Although J.G. was recommended for both the Building Maintenance Trades program and the Landscaping program at the Sypek Center, one of the MCTS campuses, J.G. asked to be placed into the Carpentry program at MCTS. On May 13, 2014, MCTS authorized J.G.'s switch into the Carpentry program. The Hamilton Board placed J.G. at MCTS for the 2014-2015 school year in a full-day program through an IEP dated August 25, 2014. On or about August 27, 2014, Hamilton submitted a formal request to MCTS for J.G. to attend Assunpink, the other campus at MCTS, as a full-time student. Hamilton requested that J.G. be placed in all general education classes and receive counseling services twice a month.

J.G. began the program at Assunpink on September 3, 2014. He attended from September 3 to September 10, 2014. During that week, the principal Sharon Nemeth, reported that J.G. had behavior problems and struggled with his daily schedule. On September 5, 2014, MCTS began providing counseling services to J.G. Thereafter, they sought additional support for him. J.G. was taken into crisis and eventually hospitalized on September 12, 2014. J.G. was discharged on October 1, 2014 to Hampton Academy and Behavioral Health Center. Petitioner went to MCTS and sought J.G.'s homework on September 15, 2014, but was not given it until September 20, 2014. On October 13, 2014, Hamilton, through J.G.'s case manager, Lisa Scaringelli, proposed an IEP to petitioner. Petitioner received the IEP and called MCTS asking why

J.G. could not start school. Ms. Dana Hice DePugh, M.Ed., LDTC, informed petitioner that she needed to sign the proposed Hamilton IEP and directed her to contact Ms. Scaringelli. Hamilton offered no other options. On October 14, 2014, J.G. contacted Ms. Nemeth and asked to return to school. On or about October 16, 2014, Hamilton held an IEP team meeting for J.G. On October 17, 2014, petitioner signed the proposed IEP. J.G. returned to MCTS, but was placed in the Sypek Center's Building Maintenance Trades program, not Assunpink for Carpentry. J.G. missed school from September 10, 2014 to October 19, 2014.

J.G. complained to John Ketterer, Interim Supervisor of Secondary Education, and asked to return to Assunpink. On November 13, 2014, Ms. Nemeth wrote a letter explaining that J.G. missed thirty-nine hours of instruction in the Carpentry program, making it difficult for him to make up the hands-on instruction. She also explained that the program in the Sypek Center offered a teaching assistant in the shop for increased support and supervision for J.G. and a social worker to support J.G.

Although Hamilton asserts that J.G. is doing well in the Building Maintenance Trades program at the Sypek Center, and the MCTS feels that it is an appropriate program for him, petitioner states that he has given up hope and feels that the present school year has been a waste. On December 1, 2014, petitioner filed the request for emergent relief seeking J.G.'s return to Assunpink and a tutor to help J.G. complete his missed work.

CONCLUSIONS OF LAW

In an application for emergent relief in a matter concerning a special needs child, the moving party must meet the standards set forth in N.J.A.C. 6A:14-2.7(m)1, N.J.A.C. 1:6A-12.1(e), and N.J.A.C. 6A:14-2.7(s)1, Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982). Emergency relief may only be granted if the judge determines from the proofs that:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;

2. The legal right underlying the petitioner's claim is settled;
3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
4. 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.

It is important to note that all four prongs must be satisfied.

Irreparable harm is the kind of harm "that cannot be redressed adequately by monetary damages." Crowe v. DeGoia, supra, 90 N.J. at 132-133. Further, the moving party must make a "clear showing of immediate irreparable harm." Hohe v. Casey, 868 F.2d 69, 72 (3d Cir. 1989), cert. denied, 493 U.S. 848 (1989). Petitioner disagrees with Hamilton's placement of J.G. at the Sypek Center and wants him back in the Carpentry Program at Assunpink. At oral argument, petitioner stated that J.G. feels that he has no future and that the year has been a waste. Petitioner stated that J.G. has discussed leaving school altogether. Hamilton, on the other hand, says that J.G. missed too many days of the Carpentry program to be able to continue with it this year although he can continue next year. Hamilton proposed the placement at Sypek as the next available alternative and has expressed that J.G. is doing well there although petitioner disagrees. As I explained to petitioner, emergent relief is extraordinary relief. Petitioner has not set forth facts that demonstrate the immediate need for the relief or the irreparable harm that will occur if the requested relief is not granted. There are many factual issues in dispute regarding the nature of the program and J.G.'s success in it so far. In addition, petitioner continues to receive the educational and support services from MCTS that are set forth in his IEP.

Because petitioner needed to establish all four prongs to prove entitlement to emergent relief and she has not been able to establish the first prong of the standard—irreparable harm, I need not analyze whether she was able to prove the other three

prongs. Suffice it to say that the relief that petitioner seeks is best determined in a due process hearing.

DECISION AND ORDER.

Under these circumstances, I **FIND** that J.G. will not suffer irreparable harm if he is not immediately placed in the Carpentry program at the Assunpink Center. On the basis of the foregoing, I **CONCLUDE** that petitioner has not established that she is entitled to emergency relief. Their request for emergency relief is **DENIED**. I so **ORDER**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). 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.

December 23, 2014

DATE

LISA JAMES-BEAVERS, ALJ

Date Mailed to Agency:

December 23, 2014

Date Mailed to Parties:

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