State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER-EMERGENT RELIEF

OAL DOCKET NO. EDS 17078-15

AGGENCY DOCKET NO.: 2016-23505

S.G. o/b/o S.G.,

Petitioner,

v.

MONTGOMERY TOWNSHIP BOARD OF EDUCATION,

Respondent.

S.G., pro se, petitioner

Jared S. Schure, Esq., for respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: November 16, 2015 Decided: November 16, 2015

BEFORE **IMRE KARASZEGI, JR.,** ALJ:

Petitioner brings this emergent relief action seeking the interim placement of her thirteen-year-old child, S.G., at the Lewis School of Princeton, pending the outcome of a due process petition. On September 23, 2015, the Office of Special Education (OSE) acknowledged receipt of the emergent relief/due process hearing requests. On October 27, 2015, OSE transmitted the matter to the Office of Administrative Law (OAL) and it was assigned Docket No. EDS 17078-2015.

The standards for the granting of emergent relief are set forth in N.J.A.C. 1:6A-12.1 and N.J.A.C. 6A:14-2.7(s)1. Emergent relief may 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.

A parent may invoke the "stay-put" provision when a school district proposes a "fundamental change in, or elimination of, a basic element of" the current educational placement. Lunceford v. D.C. Board of Education, 745 F.2d 1577, 1582 (D.C. Cir. 1984). The "touchstone" in interpreting the stay put provision "has to be whether the decision is likely to affect in some significant way the child's learning experience." DeLeon v. Susquehanna Cnty. Sch. District, 747 F.2d 149, 153 (3d Cir. 1984). Thus, in Drinker v. Colonial School District, 78 F.3d 859 (3d Cir. 1996), the Third Circuit held that a judge should not look to the irreparable harm and likelihood of success factors when analyzing a request for a stay-put order. Both Drinker and DeLeon involve cases where the school district initiated changes to a child's program. In this case however, S.G.'s parent unilaterally relocated from Palisades Park to Montgomery Township. Here, the stay-put provision to maintain the status quo, where the school district acts unilaterally, is not implicated. Thus, I will consider the criteria set forth in Crowe v. DiGioa as to this emergent relief request.

In the instant case, after hearing the arguments of petitioner and respondent and considering all the affidavits, certifications and documents submitted, I **FIND** that petitioner is not entitled to emergent relief because the proofs submitted have not established the necessary elements to grant emergency relief. Specifically, there has been no showing of irreparable harm by petitioner. The District has provided S.G. with a comparable program that offers similar or equivalent educational services to those

provided in the prior Palisades Park School District's Individualized Education Program (IEP). Petitioner's motion for emergent relief is therefore **DENIED.**

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.

November 16, 2015

DATE

IMRE KARASZEGI, JR., ALJ

11/16/15

Date Received at Agency

Date Mailed to Parties:

id