

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 18260-15

AGENCY DKT. NO. 2016-23665

CLIFTON BOARD OF EDUCATION,

Respondent.

v.

K.M. ON BEHALF OF K.M.,

Petitioners,

Jessica Kleen, Esq., appearing for petitioner (Machado Law Group, attorneys)

No one appearing on behalf of K.M., parent or K.M. the minor student

Record closed and decided: November 23, 2015

BEFORE **CARIDAD F. RIGO**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, the Clifton Board of Education, seeks an order to complete a psychiatric evaluation and to place K.M., a student in an interim alternative education setting.

On November 6, 2015, petitioner filed a petition with the Office of Special Education Programs pursuant to N.J.A.C. 6A-12.1 and N.J.A.C. 6A:14-2.7(r). The matter was transferred to the Office of Administrative Law (OAL) and received at the

OAL on November 13, 2015, as an emergent and contested matter. The matter was heard on November 20, 2015, at the Newark, New Jersey offices of the OAL.

There was no appearance by K.M.'s parents nor was there an appearance by a representative. The respondents were served with copies of the emergent relief petition and notice of the hearing time and place. See Exhibit A.

ISSUES

Has petitioner met all of the elements necessary to grant emergent relief pursuant to N.J.A.C. 6A: 14-2.7 (s)? Should petitioner be permitted to complete a psychiatric evaluation on student K.M.? And should petitioner be permitted to place the student in an interim alternative education setting?

BACKGROUND

K.M. is a thirteen year old female 8th grade student at the respondent district middle school. She is currently eligible for special education programs. Specifically, K.M. is eligible for multiple behavior plans, functional behavioral assessments, classroom behavior plans, and counseling, all of these programs have been offered and implemented but have been unsuccessful.

The district contends that K.M.'s behaviors have escalated to the point where her safety and the safety of others are at risk. K.M. has not been successful in attending in-District programs. K.M.'s parents have refused consent to seek an alternative educational setting for K.M., despite her significant amount of behavioral and discipline infractions since 2009, along with the lack of progress regarding her behavior. K.M. has been suspended from school approximately sixteen days since the beginning of the 2015-2016 academic year. She has also received approximately three in-school suspensions or detentions this year. K.M. has had incidents of misbehaviors on September 4, 18, 24, October 5 and 27, 2015.

On October 27, 2015, K.M. received an out of school suspension for taking videos of other students on her cell phone while in class. She then posted these videos to internet sites. These videos included her use of profanity, ridicule and harassment of the other special education students in her class.

Summary of Witnesses Testimony

Renee Blackowski

Renee Blackowski is the Special Services Coordinator for the Woodrow Wilson Middle School. She testified that K.M. was classified emotional disturbed with an IEP going back to 2009. She had a 1:1 aide. Blackowski stated that the programs that have been in place for K.M., have not worked. And, K.M.'s misbehaviors have escalated.

Maria Caiafa Romeo

Maria Caiafa Romeo is the school principal at Woodrow Wilson Middle School. Romeo testified that she has been the principal at that school since 2012. K.M. was transferred to Woodrow Wilson from another in district middle school towards the end of the last academic year. The reason she was transferred to Woodrow Wilson was because of her behavioral issues at her prior middle school. Romeo furthered that on the day she returned from her 10 day suspension K.M. had another incident causing her to be suspended again. In essence Romeo said K.M.'s behaviors are very disruptive and troubling to K.M. herself and the general school environment.

Romeo described a recent incident when K.M., ran away from her aide and ran into the street where she could have been injured. Romeo stated that K.M. has been aggressive to her and to her aide. She furthered that K.M. has used foul and disrespectful language to her and other staff members and how disruptive K.M. can be in class disrupting the learning experiences of other students.

Romeo stated she advised K.M.'s parents of this legal action.

LEGAL DISCUSSION AND CONCLUSION

N.J.A.C. 6A:14-2.7(s) provides that emergent relief may be granted if an administrative law judge determines from the proofs that: The petitioner will suffer irreparable harm if the requested relief is not granted; the legal right underlying the petitioner's claim is settled; the petitioner has a likelihood of prevailing on the merits of the underlying claim; and, 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. Emergent relief may be granted if there exists an issue involving a break in the delivery of services. N.J.A.C. 6A: 14-2.7 (r) (l)i. Such a break has occurred here in view of K.M.'s numerous misbehaviors, suspensions and removal from school.

The Individuals with Disabilities Education Act (IDEA) requires New Jersey to effectuate procedures which ensure that all children with disabilities residing in the State have available a Free Appropriate Public Education (FAPE) consisting of special education and related services provided in conformity with an Individualized Education Plan (IEP). 20 U.S.C. § 1401 (9) and 1412(a)(l).

N.J.A.C. 6A: 14-2.7(b), permits a school District to request a due process hearing seeking authorization to perform an evaluation of a student it determines needs to be evaluated so it may provide that student with an appropriate program or placement.

There has already been a break in the services that the District is to provide to K.M. Without a psychiatric evaluation the district is at a loss as to what to do next for K.M. Without this evaluation the District's efforts to provide K.M. with FAPE are impaired. The parents' refusal to consent to the course proposed by the District exacerbates the District's inability to provide FAPE and K.M.'s inability to obtain a meaningful education. This I **FIND** is irreparable harm.

I **FIND** that K.M. is unable to conform to school rules and conduct herself in a manner that is access an education. I **FIND** that K.M. is unable to act in a manner that does not significantly disrupt the operations of the school. I **FIND** K.M.'s misbehaviors

disrupt other student's ability to access an education. I **FIND** K.M.'s negatively impacts the safety, security and well-being of other students, herself, staff and school property.

The legal right underlying the District's claim is settled. The situation at school with K.M. warrants a psychiatric evaluation as noted by K.M.'s behaviors. K.M.'s behaviors must be addressed In order for the District to develop and implement an appropriate plan and placement for K.M.

I **FIND** that there is a likelihood of success on the merits of the District's claims. And, a balance of the equities favors the District.

Therefore, having heard the testimony of the above witnesses, reviewed the affidavits and school reports and not having heard or received anything in opposition to the District's allegations and intentions from the respondent's parents, I **CONCLUDE** that there is good cause to **GRANT** the District emergent relief.

ORDER

It is hereby **ORDERED** that petitioner's application for emergent relief be **GRANTED**. K.M. shall undergo a psychiatric evaluation to determine the exact nature of K.M.'s needs.

And, it is **FURTHER ORDERED** that the petitioner is to place K.M. in an interim alternative educational setting, and to provide home instruction or in an alternative appropriate public setting pending acceptance at an appropriate placement.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; 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.

November 23, 2015

DATE

CARIDAD F. RIGO, ALJ

Date Mailed to Agency

November 23, 2015

Date Mailed to Parties:

November 23, 2015

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