

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 19267-16

AGENCY DKT. NO. 2016/24429

Y.G. ON BEHALF OF S.G.,

Petitioner,

v.

UNION TOWNSHIP BOARD OF EDUCATION

AND WINDSOR LEARNING CENTER,

Respondents.

Y.G., Esq., for petitioner

Athina Cornell, Esq., for respondent Union Township Board of Education
(Sciarrillo, Cornell, Merlino, McKeever & Osborne, attorneys)

Janelle Edwards-Stewart, Esq., for respondent Windsor Learning Center
(Porzio, Bromberg & Newman, attorneys)

Record Closed: January 31, 2017

Decided: February 1, 2017

BEFORE: **MICHAEL ANTONIEWICZ**, ALJ

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, Y.G. on behalf of S.G., filed an application for emergent relief on December 22, 2016, seeking an order requiring the student to attend school at Windsor Learning Center (Windsor) and participate in a classroom pending her acceptance to a new school. The matter was transmitted to the Office of Administrative Law (OAL),

where it was filed on December 23, 2016, for a hearing on an expedited basis. Oral argument on the emergent relief application was scheduled for January 3, 2017. The parties requested that it be converted to a telephone conference to allow discussions toward an amicable resolution. After the parties attempted to settle this matter, which was unable to be settled, oral argument was scheduled for January 31, 2017. Respondent, Windsor, filed a counter-application for emergent relief on January 27, 2017, seeking an order permitting it to expel S.G. and to have Union Township Board of Education to provide home instruction in an interim alternative educational setting for the remainder of the 2016–2017 school year. Petitioner filed no additional documents including no brief and supporting affidavit(s), however, attempted to serve documents (a procedural history and statement of facts) at the time of the hearing via hand delivery on January 31, 2017 at 2:30 p.m., one full hour after the scheduled time for the emergent hearing. Ms. Edwards-Stewart objected to the consideration of the last-minute documents due to the lateness of their submission and Windsor’s inability to address the statements set forth in Y.G.’s documents.

ISSUE

Has the petitioner or Windsor met the standards for emergent relief as set forth at N.J.A.C. 1:6A-12.1. And, should the respondents be permitted to expel the student from Windsor and then place the student on home instruction in an interim alternative education setting until the end of the 2016–2017 academic year or placement in an alternative education setting as provided in the IEP written on December 22, 2016?

FACTUAL DISCUSSION

Based upon the submissions and testimony submitted by the parties, I **FIND** that:

S.G. is a seven-year-old special education student, classified as Other Health Impaired, in respondent, Union Township’s school district and is currently enrolled in the Windsor Learning Center. S.G. has attended Windsor since Kindergarten after being placed there by the Township of Union School District (Union BOE). S.G. has a significant history of disciplinary problems at the Windsor school as she has been

showing severe behavioral problems since the 2015–2016 school year. Such behavioral issues include: throwing objects, hitting and pushing classmates as well as staff members. As a result of this conduct, S.G. has received three one-day suspensions over the course of that last year. Y.G. disputed some of the facts alleged in Lynch’s affidavit and raised other issues, including S.G. being sexually and racially harassed. Y.G. also stated that S.G. caused injury to staff at Windsor, due to the staff causing harm to S.G. The certification written by Y.G. contains statements which were contradicted in the hearing, i.e., the fact that S.G. went to Windsor without her medication. In the written statement, Y.G. stated that “S.G.’s parent did not send her to school without her medication” but stated at the hearing that S.G. did go to Windsor without her medication “a couple” of times. Y.G.’s written statement also contains statements well outside her personal knowledge, including the issues of whether S.G. stabbed anyone at Windsor and whether S.G.’s peers fear her. Such inconsistencies call into question the complete reliability of Y.G.’s written statement of facts.

As a result of the above behavior, Windsor’s administration sought to meet with Y.G. (S.G.’s mother) and S.G.’s case manager by telephone in order to advise the petitioner that S.G. was slated for termination. However, during that telephone meeting, Windsor was persuaded to not terminate S.G. and instead, use a few mutually agreed upon techniques and program changes in order to address S.G.’s behavior.

In the 2016–2017 school year, S.G.’s behavior regressed causing S.G. to become a danger to herself, other students at Windsor and Windsor personnel. Since September 2016, S.G. has received approximately nine one-day suspensions due to her violent and disruptive behavior. There has been no evidence that any evaluations have taken place which would determine if the violent behavior by S.G. is related to her disability and none were requested.

Petitioner claims that even in a restricted environment S.G.’s needs are not being met. Petitioner also made a verbal claim as part of her application at the hearing, that all reports supporting the incidents of improper conduct by S.G. be removed from her file, even though such a request was not contained in Y.G.’s application for Emergent

Relief and was raised for the first time in the hearing on January 31, 2017. As this request was not part of Y.G.'s Emergent Relief application, it is hereby **DENIED**.

Since September 2016, S.G. has been involved in more than ten separate incidents of misbehavior, aggression, attempts to self-inflict injury, abuse of staff, teachers and other students. In fact, it was alleged that there was a very recent case of S.G. drawing blood from a Windsor staff member due to S.G.'s violent behavior.

Summary of Affidavit

Richard Lynch, Director of Windsor Learning Center

Richard Lynch (Lynch) is the Director (for thirteen years) of the Windsor Learning Center, which is a private school for students with disabilities. S.G. is a seven-year-old student in the second grade, who is eligible for special education with a classification of Other Health Impaired (OHI) due to a diagnosis of Attention Deficit Hyperactivity Disorder.

S.G. is enrolled at Windsor, where she has attended the school for about three school years, having been first placed there in the Kindergarten grade by the Union Township Board of Education.

During the 2015–2016 school year, S.G. began to exhibit serious behavior issues. Such behavior included pushing, hitting and scratching staff members and other students. S.G. also would throw objects, scream and yell and flee the classrooms and other locations. As a result of these behaviors, S.G. was suspended from Windsor on about three occasions (for one-day period for each suspensions). Administrative staff from Windsor requested numerous meetings with Y.G. in connection with S.G.'s behavior. Y.G. attended some of these meetings, declined to attend or “no showed” for other meetings. Based on these facts, Windsor determined that it had to terminate S.G.'s enrollment in the Windsor school and the lack of parental cooperation.

Accordingly, in accordance with N.J.A.C. 6A:14-7.7(a), Windsor notified Union BOE of its intention to terminate this enrollment and requested a meeting. Tara Wisiak, the case manager assigned to S.G. from Union BOE, scheduled an IEP meeting in the spring of 2016. At this meeting, Windsor was persuaded to continue S.G.'s enrollment and used several measures in a new attempt to manage the student's behavior. After such efforts, there was slight improvement in her behavior and she remained at Windsor for the balance of the 2015–2016 school year.

When S.G. returned to Windsor for the 2016–2017 school year, her behavior regressed significantly. From the time frame of September 2016 to December 2016, S.G. engaged in behaviors including but not limited to punching staff and students, yelling, screaming, cursing, refusing to leave a classroom or other areas, fleeing a classroom and stabbing a fellow student with a pencil. As a result of this behavior, S.G. received nine one-day suspensions, each for one or more instances of physical violence towards staff and/or students. Many of S.G.'s fellow classmates are terrified of S.G.'s violent behavior and thus are unable to comfortably receive instruction with her in the room.

Based on the above behavior, on December 1, 2016, Windsor notified Union BOE and Y.G. that S.G.'s enrollment was going to be terminated. Thereafter, an IEP meeting was arranged for December 8, 2016 via telephone. Despite this arrangement, neither Ms. Wisiak, from Union BOE, and Y.G. telephoned into the meeting. On December 8, 2016, Windsor issued a termination letter, terminating S.G. effective December 12, 2016.

After the above termination letter was issued by Windsor, Wisiak called Windsor to state that she was working with Y.G. to locate a new placement for S.G. and was arranging for home instruction in the interim. As a result, S.G. did not return to school between December 12 through 20, 2016. Union then arranged for another IEP meeting to be held on December 23, 2016, however, Wisiak contacted Windsor on that morning in order to advise that Y.G. had emailed her to advise that she would not attend the IEP meeting. Wisiak also advised that Windsor should proceed with the meeting in any event. In an attempt to accommodate S.G., her family and Union BOE, Windsor would

allow until January 13, 2017, for the parties to find a new placement. At this IEP, Union amended the IEP to place S.G. on home instruction.

Y.G. filed for emergent relief on or about December 23, 2016. After this filing, Y.G. sought to impose behavior management restrictions on Windsor and sent S.G. to school without her medication on several occasions. Since these events, there has been a sharp increase in S.G.'s behavior incidents, which are now at about three times a day. On January 9, 2017, S.G. threw a marker at another student and refused to complete her classwork and also refused to take a break with a teacher. On January 10, 2017, S.G. threw paper and pencils at other students and fled the classroom. On January 12, 2017, Windsor principal and social worker, McCloud, spoke with Y.G. during a weekly update and they discussed S.G.'s incidents. Y.G. informed the principal that S.G. did not take her medication home and then gave her consent for Windsor to administer S.G.'s medication.

On January 12, 2017, S.G. acted out by putting tissue paper in her mouth, throwing her pencil at a teacher, kicking the teacher in the shin and attempting to hit the teacher in her face. In addition, on this date, S.G. tried to flip a table in the classroom. She fled the classroom and upon returning, pushed another student into a bookshelf.

In light of these events, Windsor requested a meeting with Y.G. to occur on January 19, 2017. Y.G. first stated that she would attend this meeting; however, she failed to appear based on an allegation that Windsor threatened legal action. At this point in time, S.G. is attending school on a daily basis and is still having behavior incidents on a daily basis.

Petitioner's Application

As stated above, this application for Emergent Relief was filed by Y.G. on behalf of S.G., in late December 2016, and no additional filing was made by Y.G. on behalf of the application for Emergent Relief until the late start of the emergent hearing as set forth herein above. Ms. G. admitted that she received Windsor's Application for Emergent Relief on January 27, 2017, and yet did not timely file any response. Ms. G.

stated that she had no time to properly respond, but did not ask this body or the opposing counsel for additional time, because she did not think she could. Ms. G. is a practicing attorney and decided to represent the interests of S.G., even though this was not her area of practice. Y.G. signed an emergent relief application which confirmed her understanding that her request had to comply with N.J.A.C. 1:6A-12.1 and the necessity of the proofs which had complied with.

LEGAL ANALYSIS

N.J.A.C. 1:6A-12.1(a) provides that “. . . at any time after a hearing is requested, the affected . . . board or public agency may apply in writing for emergency relief” In addition, 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 applicant will suffer irreparable harm if the requested relief is not granted; the legal right underlying the applicant’s claim is settled; the applicant has a likelihood of prevailing on the merits of the underlying claim; and, when the equities and interests of the parties are balanced, the applicant will suffer greater harm than the opposition party 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 S.G.’s numerous misbehaviors as detailed hereinabove and the request of Windsor to terminate the student’s enrollment in Windsor.

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).

There has already been a break in the form of services that the district/Windsor is to provide to S.G. Without S.G. modifying her behavior, Windsor’s efforts to provide S.G. with FAPE are impaired. In addition, it is clear that S.G. is a danger to herself,

Windsor staff and other students at Windsor. In fact, it can be accepted that other students' ability to be educated has been and will be impinged by the actions of S.G. The parent's refusal to consent to the course proposed by the Windsor exacerbates the school inability to provide FAPE and S.G.'s inability to obtain a meaningful education. This I **FIND** is irreparable harm. Thomas P. Carney, Inc. v. Franklin Twp. Bd. of Educ. 365 N.J. Super. 509, 513 (Law Div. 2003).

The legal right underlying the Windsor's claim is settled. The situation at school with S.G. warrants S.G. being expelled from Windsor as noted by the facts presented by Lynch about S.G.'s behaviors. I cannot stress enough my concern for this child's safety as well as the safety of her classmates and the staff at Windsor. S.G.'s behaviors must be addressed in order for the district to develop and implement an appropriate program and placement for S.G. In fact, Union amended S.G.'s IEP on December 22, 2016 to provide S.G. with home instruction. N.J.A.C. 6A:14-2.7(r) and 6A:14-2.7(n). See also East Orange Bd. of Educ. v. N.G. o/b/o A.N.J., OAL Docket No. EDS 1638-00, Final Decision, March 6, 2000, wherein the ALJ granted emergent relief in the form of home instruction inter alia due to the student's dangerousness and the parent's failure to cooperate with the school in the administration of home instruction. Accordingly, I further **FIND** that there is a likelihood of success on the merits of the Windsor's claims and a balance of the equities favors Windsor. Whereas, the petitioner has failed to show a likelihood success on the merits or a balance of equities in their favor.

Therefore, having reviewed the submissions of the parties in this case, the arguments of the parent, the Union Board of Education and Windsor and having reviewed the affidavits and behavior reports, I **CONCLUDE** that there is good cause to **GRANT** Windsor's emergent relief and **DENY** the petitioner's request for emergent relief.

ORDER

It is hereby **ORDERED** that the Windsor's application for emergent relief be **GRANTED** and the petitioner's application for emergent relief be **DENIED**.

It is **FURTHER ORDERED** that the respondents are to place S.G. in an interim alternative educational setting to include home instruction pending a placement or program acceptance in another appropriate school.

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.

February 1, 2017
DATE

MICHAEL ANTONIEWICZ, ALJ

Date Received at Agency

Date Mailed to Parties:

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