

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION DENYING

EMERGENT RELIEF

OAL DKT. NO. EDS 8938-14

AGENCY DKT. NO. 2014 21363

J.W. AND P.W. ON BEHALF OF M.W.,

Petitioners,

v.

NORTH BRUNSWICK TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Denise Lanchantin Dwyer, Esq., for petitioners (Law Office of Denise Lanchantin Dwyer)

Alison Kenny, Esq., for respondent (Schwartz, Simon, Edelstein and Celso, attorneys)

Record Closed: August 15, 2014

Decided: August 15, 2014

BEFORE TIFFANY M. WILLIAMS, ALJ:

This matter arises on an emergent basis as a result of the petitioner's request for relief in connection with the removal of M.W., an 11-year old, from the Arthur Judd Elementary School in North Brunswick, New Jersey. On his behalf, M.W.'s parents, J.W. and P.W., through their attorney, request that he be returned to his last agreed upon placement at school. The parents also request that certain educational records be expunged and reimbursement for private educational services rendered. The matter

was transmitted to the Office of Administrative Law on July 17, 2014, where it was assigned to Administrative Law Judge Carol Cohen for a settlement conference. Prior to the settlement conference, the emergent matter was transmitted to the undersigned and an oral argument was conducted on August 13, 2014. Prior to the oral argument, the parties submitted legal briefs in support of their respective positions.

The central facts in this matter are undisputed and **FOUND** as **FACT**. On May 5, 2014, the District removed M.W. from his 5th grade general education school placement where he was also receiving speech-language services through his IEP. As grounds for removal, the District cited an incident on May 5, 2014 where M.W., an 11-year old, brought two kitchen knives to school and allegedly showed other students. The respondent also alleged as grounds for removal that the petitioner had made reference in an investigatory interview to a recent incident in a Pennsylvania school where a student had injured other students with a knife. On May 8, 2014, the respondent notified the Child Study Team that a hearing would be conducted on May 12, 2014, to determine whether M.W.'s actions had been a manifestation of his disability. M.W.'s parents did not attend the hearing but a determination was made that M.W.'s conduct in bringing the knives to school was not a manifestation of his disability. On May 14, 2014, a disciplinary hearing before a Committee of the District's Board of Education was conducted and the Committee recommended that M.W. remain suspended pending a psychiatric evaluation by a District physician and the resolution of pending criminal charges. The District provided M.W. ten hours per week of home instruction between May 12, 2014 and June 20, 2014.

Emergent relief pending settlement or decision may be requested by any party as part of the hearing request, or at any time after a hearing is requested. N.J.A.C. 1:6A-12.1(a); N.J.A.C. 6A:14-2.7(r). Emergent relief shall only be requested for issues involving 1) a break in the delivery of services, 2) disciplinary action, 3) graduation or participation in graduation ceremonies, and 4) placement pending the outcome of due process proceedings (also known as the stay-put provision). N.J.A.C. 6A:14-2.7(r).

The judge may order emergent relief if the judge determines that: (1) irreparable harm will result if the requested relief is not granted; (2) the legal right underlying the

petitioner's claim is settled; (3) petitioner is likely to prevail on the merits of the underlying claim; and (4) when the 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. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(s). See also Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982).

DECISION AND ORDER

In evaluating the petitioner's requested relief, I **CONCLUDE** that emergent relief is not warranted. As an initial matter, the suspension involves disciplinary removal charges that were substantiated as not having been a manifestation of his disability. The appeal of that charge has been transmitted to this office on August 5, 2015, under docket number EDU 009802-2014. There is no emergent application filed in connection with that matter. Accordingly, the resolution of the underlying merits of that petition will not be considered on an emergent basis.

In connection with the emergent application to the petition filed seeking to return M.W. to his last agreed upon placement, receiving speech-language services, I **CONCLUDE** that the factors for emergent relief were not satisfied. While there technically has been no break in educational services, it is undisputed that there has been a diminished educational benefit where the student receives only 2 hours of educational enrichment daily. Nonetheless, the District has a compelling interest in ensuring the safety of the student body and of M.W. himself. Where the District's sole condition is that M.W. submit to a psychiatric evaluation that clears him to return to school, there cannot legitimately be irreparable harm present. For the same reasons, the equities weigh in favor of the District's interest in protecting the safety of the larger school body.

While this matter is not ripe for emergent relief, it is ripe for an expedited resolution and case management to prevent any further delay in determining the appropriate placement for M.W. as the school year approaches, in the event that M.W.'s parents decide not to subject him to a psychiatric evaluation. Accordingly, the request

for emergent relief is hereby **DENIED**. It is **ORDERED** that the matter proceed to hearing on an expedited basis.

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.

August 15, 2014
DATE

TIFFANY M. WILLIAMS, ALJ

Date Received at Agency

August 15, 2014

Date Mailed to Parties:

August 15, 2014