



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 04848-22

AGENCY DKT. NO. 2022-34521

M.M. ON BEHALF OF A.B.,

Petitioner,

v.

GREATER EGG HARBOR REGIONAL

BOARD OF EDUCATION,

Respondent.

M.M., on behalf of A.B., pro se

Rachel M. Taylor, Esq., for respondent (Cooper Levenson, PA, attorneys)

Record Closed: June 20, 2022

Decided: June 21, 2022

BEFORE **TAMA B. HUGHES**, ALJ:

STATEMENT OF THE CASE

On June 20, 2022, petitioner M.M. on behalf of A.B. filed a request for emergent relief with the Department of Education, Office of Special Education (OSE).¹ Specifically, M.M., A.B.'s mother, seeks emergent relief to allow A.B. to participate in the Cedar Creek High School's (Cedar Creek) graduation ceremony on June 21, 2022.

¹ At the time this application was filed, A.B. was eighteen years old. On June 17, 2022, he provided M.M. authority to act on his behalf as it related to his education needs. A copy of the same is attached as Exhibit P-1.

PROCEDURAL HISTORY

Petitioner filed this Emergent Petition with OSE on June 16, 2022. OSE transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 20, 2022, and scheduled for oral argument on this same date of June 20, 2022. Oral argument took place remotely via Zoom. Greater Egg Harbor Regional High School District Board of Education (respondent) submitted a Certification with supporting documentation of James Reina, Superintendent, and written legal argument in opposition to the requested relief. Supplemental email and briefs were submitted after oral argument at the request of the tribunal.

FACTUAL DISCUSSION

For purposes of deciding this application for emergent relief, the following facts are undisputed, and **I FIND** them as **FACT**.

A.B., who turned eighteen in January 2022, is a senior at Cedar Creek and has been enrolled in Cedar Creek commencing in September 2021. Prior to that, he was enrolled in Charter Tech High School.

A.B. has been classified as other health impaired based upon the diagnosis of Attention Deficit Hyperactive Disorder (ADHD) and Oppositional Defiance Disorder (ODD.) When A.B. entered Cedar Creek he had an IEP in place from Charter Tech High School. On October 4, 2021, a thirty-day review of the IEP took place to determine if any changes were required.

In September 2021, A.B. starting missing homework assignments. This pattern continued throughout the school year. (Respondent's brief, Reina's certification.) School staff spoke to M.M. and A.B. about his lack of performance and failing grades on multiple of occasions. The school also informed M.M. and A.B. that A.B.'s graduation was in

jeopardy as a result of his failing grades in math and English.² (Respondent's brief, Reina's certification.)

Over the course of the academic year, multiple services were offered to A.B. which included among other things, tutoring services; individual assistance; homebound instruction; a half-day schedule; and smaller class sizes.³ (Respondent's brief, Reina's certification.) M.M. was made aware of the services being offered, however, A.B. failed to take advantage of the services being offered.

In February and March 2022, A.B. was placed on hall pass restriction due to his misuse of hall passes. A.B. would roam the halls and either miss class(es) or was late in returning to the class. (Respondent's brief, Reina's certification.)

Over the 2021/2022 academic year, A.B. was absent thirty-three times and had accumulated a total of sixty-seven tardies. (Respondent's brief, Reina's certification.)

At the end of the 2021/2022 school year, A.B. received failing grades in math (51) and English (45.) A.B. is 10 credits short of the 120- credits required to graduate and is planning on attending summer school in the hopes of passing math and English.

At this time A.B. seeks to walk with his graduating class. There were no special provisions in his current IEP regarding graduation. The Board's Policy 5460 states that a graduating student must earn a minimum of 120 credits in courses designed to meet all of the New Jersey Learning Standards. (Respondent's brief, Reina's certification.)

LEGAL DISCUSSION

The standards to be met by the moving party in an application for emergent relief in a matter concerning a special needs child are set forth in N.J.A.C. 1:6A-12.1(e) and N.J.A.C.

² A.B. and M.M. were informed that A.B.'s graduation was in jeopardy on December 7, 2021, January 24, 2022, March 30, 2022, May 25, 2022, and June 8, 2022. (Respondent's brief, Reina's certification.)

³ Half-day instruction was offered in the beginning of the school year however M.M. turned it down. In March 2022, M.M. requested that A.B. be placed on a half-a-day schedule which was done.

6A-14-2.7(m)1. See also Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982). They provide that a judge may order emergency relief 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.

The moving party must meet each prong of the test. Also relevant to this matter is N.J.S.A. 18A:7C-5.2(a), otherwise known as "Alicia's law" which provides that a special education student "whose individualized education program" includes programs beyond the fourth year of high school shall be allowed to participate in commencement ceremonies. Enacted in 2008, the legislative statement to the bill notes:

. . . this bill will ensure that young people in (similar situations) will be able to join the friends and classmates with who so many important childhood milestones have been shared in celebrating this poignant rite of passage.

Applying the above to the within matter, I **FIND** that petitioner A.B. will suffer irreparable harm if not allowed to attend his graduation ceremony. As evidenced by the public policy set forth in Alicia's law, the ceremony is a unique event in a student's lifetime, and one in which a special needs student, in particular, is entitled to share with his peers. Similarly, Alicia's law underlies the second and third prongs of the test for emergent relief. Petitioner is entitled to the application of the statute as he is presumptively entitled to a continuation of special education services as he has not graduated and is only eighteen years of age. What those programs and services will be should be the subject of an IEP meeting, or a due process hearing if necessary. Due to the application of that statute, petitioner has prevailed on the likelihood of success and the underlying prongs of the

emergent relief test. If the statute applies to a student, it provides that a school district “shall” permit the student “to participate in commencement ceremonies with his graduating class.”

The final prong of the test requires a finding that the petitioner will suffer greater harm than the respondent. The irreparable harm to be suffered by A.B. is unique and personal to him and one which has been recognized by the legislature in its enactment of Alicia’s law. Not allowing him to walk with his peers, and the stigma that may entail is a greater harm than a perceived negative impact on the Board’s policy on graduation.

Under all of the foregoing, I **GRANT** the request for emergent relief to allow A.B. to participate in the June 21, 2022, graduation ceremony.

DECISION AND ORDER

For the reasons stated above, I hereby **ORDER** that petitioners’ application for emergent relief to permit A.B. to participate in the graduation ceremony on June 21, 2022, is hereby **GRANTED** and the Greater Egg Harbor Regional High School District Board of Education shall permit A.B. to participate in graduation ceremonies.

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.



June 21, 2022

DATE

TAMA B. HUGHES, ALJ

Date Received at Agency

Date Mailed to Parties:

TBH/gd

LIST OF EXHIBITS

For petitioner:

P-1 - June 17, 2022, authorization letter

For respondent:

Answer to Request for Emergent Relief

Certification of Service

Brief in Opposition to Request for Emergent Relief

Certification of James Reina