



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 05321-22

AGENCY DKT. NO. 2022-34591

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

Petitioner,

v.

**MONMOUTH REGIONAL BOARD
OF EDUCATION, MONMOUTH COUNTY,**

Respondent.

Michael I. Inzelbuch, Esq., for petitioner

Paul C. Kalac, Esq., for respondent (Weiner Law Group, attorneys)

Record Closed: July 1, 2022

Decided: July 5, 2022

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

By a request for emergent relief and petition for due process, petitioner K.M. seeks (1) an order applying the doctrine of stay-put and requiring the immediate return of A.M. to Shrub Oak International School in Mohegan Lakes, New York, consistent with the individual education program (IEP) adopted for A.M. as of October 26, 2021, by which

A.M. was placed at Shrub Oak; (2) compensatory education for the period in which A.M. did not receive IEP-mandated services, between March 18, 2020, and September 1, 2021; and (3) reimbursement of related costs and fees.

This matter was transmitted to the Office of Administrative Law on June 29, 2022, for an emergent relief hearing and a final determination in accordance with 20 U.S.C. § 1415 and 34 C.F.R. §§ 300.500 to 300.587. Oral argument on emergent relief was held on July 1, 2022, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

The following facts are not in dispute and form the basis for the below decision. Accordingly, I **FIND** as **FACTS**:

1. K.M. is a twenty-year-old adult male who is eligible for special education (SE) and related services in the Autism classification category.
2. Since approximately July 2020, A.M. has attended Shrub Oak International School (Shrub Oak), where he is placed in a therapeutic residential program, at the expense of the Board.
3. A.M.'s current IEP, adopted on October 26, 2021, and effective through October 26, 2022, continues his placement at Shrub Oak.
4. Since July 2020, the Board has entered a series of annual tuition contracts with Shrub Oak by which the Board has agreed to pay tuition for A.M. for a one-year period.
5. On or about March 2022, a dispute arose between the Board and Shrub Oak over tuition for the period July 1, 2022, through June 30, 2023. Notwithstanding that dispute, Shrub Oak sent a contract to the Board by which Shrub Oak agreed to provide SE and related residential and therapeutic services to A.M. and the Board agreed to pay for such services in the amount of \$408,000 annually, or \$34,000/month.

6. The Board approved this contract by resolution at its regular meeting of June 21, 2022.
7. On or before June 30, 2022, Shrub Oak contacted K.M. to remove A.M. from the residential facility due to the financial dispute with the Board. Shortly thereafter, K.M. filed this action for emergent relief.
8. During a prehearing conference on July 1, 2022, the parties stipulated that A.M. must remain in a residential placement and cannot be removed from Shrub Oak until a mutually agreed upon placement is identified and A.M. has been accepted by such facility.
9. During the emergent hearing on July 1, 2022, the Board, through counsel, agreed to continue to pay tuition to Shrub Oak pursuant to the contract approved on June 21, 2022, pending the identification of a mutually agreed upon alternate placement and the enrollment of A.M. in such placement.

LEGAL ANALYSIS, CONCLUSIONS AND ORDER

N.J.A.C. 1:6A-12.1(a) provides that the affected parent may apply in writing for emergent relief. An emergent relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein.

Emergent relief shall only be requested for specific issues, including a break in the delivery of services. N.J.A.C. 6A:14-2.7(r). Here, petitioner has requested emergent relief to maintain A.M. in his out-of-district, residential placement. Therefore, I **CONCLUDE** that petitioner has established that the issue in this matter concerns a break in the delivery of SE and related therapeutic services to A.M.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6. The petitioners bear the burden of proving:

1. that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted;
2. the existence of a settled legal right underlying the petitioner's claim;
3. that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and
4. when the equities and the interests of the parties are balanced, the party seeking emergent relief will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132-34.]

Based on the above-listed facts, the stipulations of the parties and their mutual agreement to cooperate in the resolution of this matter, I **CONCLUDE** that the emergent relief sought by petitioner is appropriate and, therefore:

I **ORDER** that A.M. shall remain at Shrub Oak until an alternate placement is agreed upon by petitioner K.M. and respondent Monmouth Regional Board of Education and A.M. is accepted by and enrolled in such alternate placement.

I further **ORDER** that petitioner and respondent shall begin immediately to cooperate on identifying and securing an alternate residential placement for A.M. that meets the criteria described in the October 26, 2021 IEP (referenced above). Such cooperation by the parties shall include, but not be limited to, the consent by K.M. to the release of records for intake evaluations, the participation of both parties in the intake evaluation processes at and/or with potential placements, and the entry by respondent of a tuition contract with the agreed-upon placement covering costs for A.M. from the date of his enrollment through June 30, 2023.

Finally, I **ORDER** that the Board shall pay tuition to Shrub Oak for A.M. on a pro rata basis according to the contract with Shrub Oak approved by the Board on June 21, 2022 (and described more fully above).

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. § 1415(f)(1)(B)(i). If the parents or adult student feel 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 Programs.

July 5, 2022
DATE


TRICIA M. CALIGUIRE, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

TMC/nmn