



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION**

**ON EMERGENT RELIEF**

OAL DKT. NO. EDS 01090-22

AGENCY DKT. NO. 2022-33886

**S.B. ON BEHALF OF D.H.,**

Petitioner,

v.

**CAMDEN PREP, INC. BOARD  
OF EDUCATION<sup>1</sup>,**

Respondents.

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**S.B.**, petitioner, pro se

**Teresa L. Moore**, Esq., for respondents (Riker, Danzig, Scherer, Hyland, Perretti,  
LLP, attorneys)

Record Closed: February 18, 2022

Decided: February 22, 2022

BEFORE **JEFFREY R. WILSON**, ALJ:

**STATEMENT OF THE CASE**

D.S., the petitioner, brings an action for emergent relief, on behalf of D.H., against the Camden Prep, Inc. Board of Education (Board/respondents) seeking an order for the immediate provision of education in the Camden Prep School.

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<sup>1</sup> The respondent Camden Prep Charter School is improperly named Camden Prep, Inc. BOE.

The respondent opposes the relief requested because the request is moot. Furthermore, the respondent contends the request for relief does not meet the standard for emergent relief.

### **PROCEDURAL HISTORY**

Petitioner filed a request for emergency relief and a due process hearing on January 26, 2022, at the State Office of Special Education (OSE). On February 11, 2022, OSE transmitted the matter to the Office of Administrative Law (OAL) as a contested case seeking emergent relief for the petitioner. The underlying due process petition remains at OSE. The parties presented oral argument on the emergent relief application on February 18, 2022, utilizing the Zoom platform and the record closed.

### **FACTUAL DISCUSSION**

D.H. is eight-years-old and in third grade at the Camden Prep's Mt. Ephraim Elementary School (Camden Prep School). She entered the school on October 3, 2021, and has received education services there through the present. She has been suspended on numerous occasions; however, she has never been expelled or disenrolled.

On February 10, 2022, D.H. was found to be eligible for special education and related services and an Individualized Education Program (IEP) was offered and accepted. Prior to this date, D.H. was under a 504 Plan. All services included in the IEP are to be provided through the Camden Prep School for the balance of the 2021-2022 school year and the first half of the 2022-2023 school year. Services included in the IEP are counselling, occupational therapy, a behavioral intervention plan and a 1:1 aide through D.H.'s school day.

## LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, District or public agency 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 and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;
- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Here, the petitioner seeks an order for the immediate provision of education in the Camden Prep School, pending the outcome of the due process hearing. Therefore, I **CONCLUDE** it has been established the issue concerns placement pending the outcome of the due process hearing.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982), and codified at N.J.A.C. 1:6A-12.1(e), one of the Department's regulations governing special education. These standards for emergent relief include 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.) a balancing of the equities and interests that the party seeking emergent relief will suffer greater harm than the respondent. The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

Here, there is no need to conduct a Crowe analysis. It is undisputed that D.H. has been receiving uninterrupted education services through the Camden Prep School since October 3, 2021. Furthermore, it is intended that she continue to receive services there under the newly agreed to IEP. Accordingly, I **CONCLUDE** that the petitioner’s request for emergent relief is moot.

**ORDER**

Having concluded that the petitioner request for emergent relief is moot, the petitioner’s request for emergent relief is **DENIED**.

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.



February 22, 2022

DATE

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**JEFFREY R. WILSON, ALJ**

Date Received at Agency

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

JRW/tat

**APPENDIX**  
**WITNESSES**

**For Petitioner:**

None

**For Respondent:**

None

**EXHIBITS**

**For Petitioner:**

P-1 None

**For Respondent:**

R-1 Brief and certification in opposition to petition for emergent relief, filed  
February 17, 2022