



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

ON EMERGENT RELIEF

OAL DKT. NO. EDS 00840-23

AGENCY DKT.NO. 2023-35258

H.F. & K.B. ON BEHALF OF M.B.,

Petitioner,

v.

**SUSSEX-WANTAGE REGIONAL BOARD OF
EDUCATION,**

Respondent.

Mildred Spiller, Esq. for petitioner (Warshaw Law Firm, LLC)

Marc Mucciolo, Esq. for respondent

Record Closed: April 20, 2023

Decided: April 20, 2023

BEFORE **KIMBERLY A. MOSS**, ALJ:

Petitioners, H.F. on behalf of minor child M.B., brings this action seeking home instruction and related services pending an out of district placement in an autism school, compensatory education and reimbursement to petitioners for ABA services.

On January 27, 2023, the Office of Special Education Programs transmitted the matter to the Office of Administrative Law (OAL) for a due process hearing. Petitioner filed a motion for emergent relief on April 3, 2023. Opposition to the motion was filed on April 17, 2023. A reply to the opposition was filed on April 19, 2023. Oral arguments were held on April 20, 2023. The hearing is scheduled for May 17, 2023, and June 5, 2023.

FACTUAL DISCUSSION

After carefully considering the documentary evidence presented, and having had the opportunity to hear oral arguments, I **FIND** the following **FACTS**:

M.B. resides in the Sussex-Wantage Regional District. He receives special education services under the classification of autism. He is non-verbal. In late September 2022 through the beginning of October 2022, M.B. started acting out and refusing to get into the school bus.

On October 28, 2022, while in gym class, petitioner alleges that a teacher assistant/paraprofessional pushed M.B. to the ground, grabbed a bowling pin out of M.B.'s hand and hit M.B. with her hand. Petitioners allege that M.B. suffered an eye injury in addition to suffering humiliation and emotional distress.

The certification of Stephanie Hennion, Director of Special Services for the Board states on October 28, 2022 during gym class "M.B. began forcefully throwing bowling pins in use by the class across the gym floor, almost hitting several other students in the classroom. The paraprofessional then walked over to M.B. and grabbed a bowling pin out of his hands before he could throw it again, and in the course of that action her I.D. lanyard swung past M.B.'s face, appearing to hit him.

On October 31, 2022, Petitioners took M.B. to Dr H. Patrick Burns. Dr Burns recommended that M.B. not return to the school and immediately be placed in an out of district school. Dr. Burns did not give a reason or explanation for his opinion. Dr Burns

medical specialty is unclear. Petitioners informed the District of Dr. Burns recommendation. The District did not provide home instruction or an out of district placement for M.B.

Petitioners removed M.B. from school. M.B. receives private in-home supports from a paraprofessional and a BCBA.

LEGAL ANALYSIS AND CONCLUSION

The standards for the granting of emergent relief are set forth in N.J.A.C. 6A:3-1.6(b). Emergent relief may be granted 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.

In this matter, the petitioner has not shown that M.B. will suffer irreparable harm if he is not given home instruction or placed in an out of district placement. Although Dr. Burns writes in a letter that M.B. needs an out of district placement, his reasoning is not clear. The two letters of Dr. Burns are one paragraph each and do not state the specific type of placement that M.B. needs and how that is different than the district's placement. There is a clear difference in how the parties state the incident of October 28, 2022, took place. It is not clear that petitioner's underlying claim is settled or that there is a likelihood that the petitioner will prevail on the merits. The issue of whether M.B. should receive home instruction or an out of district placement is a question of material fact of fact. In addition, the decision for M.B. to not return to the district was petitioners.

In this matter when the interests are balanced it is not clear that petitioner will suffer greater harm than respondent if the relief is not granted.

In this case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirements of N.J.A.C. 6A:3-1.5(b).

ORDER

It is **ORDERED** that the petition for emergent relief is hereby **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 Programs.

April 20, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

April 20, 2023_____

Date Mailed to Parties:

April 20, 2023_____

ljb