



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 01553-2023

AGENCY DKT. NO. 2023-35496

**HOLLAND TOWNSHIP BOARD OF
EDUCATION.,**

Petitioner,

v.

S.M. AND M.M., ON BEHALF OF L.M.,

Respondents.

Curtis D'Costa, Esq., for petitioner (Comegno Law Group LLC, attorneys)

Johanna Burke, Esq., for respondent, S.M., father of L.M. (fight4autism, attorneys)

M.M., respondent, mother of L.M., pro se

BEFORE, **CARL V. BUCK III**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a due process petition and motion for emergent relief with the Office of Special Education (OSE) in the New Jersey Department of Education (DOE). The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was heard on February 28, 2023 via the ZOOM platform.

The motion for emergent relief seeks an order that would place the student in an interim alternative placement for not more than forty-five calendar days because it is extremely dangerous for the student to be in his current placement, as the student poses a danger to himself and to others and to property. The Board and the parents did not agree to an appropriate placement therefore the request for emergent relief was heard on February 28, 2023. S.M. who is the father appeared at the hearing but M.M. who is the mother of L.M. did not appear as she was in the hospital for a medical issue.

LEGAL ANALYSIS AND CONCLUSION

Details regarding the application were placed on the record on February 28, 2023, and this Order shall be in accordance with the directives given on the record on that date.

As a matter of course, it must initially be determined if petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

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

As the present matter concerns the issues of a break in services, discipline and placement pending the outcome of due process proceedings, petitioner is certainly entitled to seek emergent relief.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1).

The four factors (the Factors), include:

1. The petitioner will suffer irreparable harm if the requested relief is not granted;
2. The legal right underlying 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 bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt. of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is in order.

Factor One. The petitioner will suffer irreparable harm if the requested relief is not granted. Staff are also at risk. L.M. is also at risk, as the child has exhibited self-injurious behavior. The continued behaviors need to be addressed, and an IEP developed to address them. Petitioner is required to maintain the safety of its students and staff, and to ensure an atmosphere conducive to learning for its students. L.M.’s continued attendance in school will greatly diminish petitioner’s ability to provide the same.

Factor Two. The legal right underlying petitioner’s claim is settled. Petitioner is responsible for maintaining a safe school for its students and staff. N.J.A.C. 6A:14-2.8(f) authorizes the removal of a student when the student caused a serious bodily injury under 20 U.S.C. §1415(k). N.J.S.A. 18A:37-13 states in pertinent part “. . . a safe and civil environment in school is necessary for students to learn and achieve high academic

standards; harassment, intimidation or bullying, like other disruptive or violent behaviors, is conduct that disrupts both a student's ability to learn and a school's ability to educate its students in a safe environment . . .”

Factor Three. Petitioner has a likelihood of prevailing on the merits of the underlying claim. Petitioner must address L.M.'s behavior and his disability in developing an appropriate IEP. The only avenue available is to evaluate L.M. and determine an appropriate placement. In this regard, petitioner is likely to prevail on the merits.

Factor Four. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondents will suffer if the requested relief will not be granted. Here, both the petitioner and respondent will suffer irreparable harm if the requested relief is not granted because, if granted, L.M. will continue to receive an education via home instruction pending evaluation. This is the least restrictive environment. He needs to have evaluations done and a proper placement made according to his needs. The petitioner, if not granted, will be unable to ensure the safety of its students and staff, and the ability of its students, particularly the classmates of L.M., from receiving an appropriate education in a safe and civil environment.

N.J.A.C. § 6A:14-2.7(n) provides:

To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days [. . .]

The OAL has previously granted emergent relief in similar circumstances. See Gloucester City Bd. of Educ., OAL DKT. NO. EDS 09165-15 (2015), Wayne Twp. Bd. of Educ. v. G.G. and S.W. ex.rel. G.G., OAL DKT. NO. EDS 05519-17 (2017), and Washington Twp. Bd. of Educ. v. H.M. ex.rel., OAL DKT NO. EDS 08328-19 (2019).

Based upon the foregoing, I **CONCLUDE** that petitioner's request for emergent relief be **GRANTED**.

ORDER

It is hereby **ORDERED** that petitioner's request for emergent relief is **GRANTED**. **IT IS FURTHER ORDERED** that L.M. be placed in an appropriate interim alternative education setting (IAES) of home instruction for forty-five calendar days because L.M.'s current placement is substantially likely to result in injury to L.M. or others. **IT IS FURTHER ORDERED** that the parents are compelled to enable the District to obtain, release, and/or exchange L.M.'s student records and protected health information ("PHI") with the agencies or individuals needed to enable the studies needed to facilitate an evaluation of the student. **IT IS FURTHER ORDERED** that the parents are compelled to cooperate with the District and make the student available for evaluations and studies needed to appropriately evaluate the student during this period of home instruction.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The parties will be notified of the scheduled hearing dates. 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.



March 22, 2023 _____

DATE

CARL V. BUCK III, ALJ

Date Received at Agency: _____

Date Sent to Parties: _____

CSV/tat