



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON

EMERGENT RELIEF

OAL DKT. NO. EDS 01666-23

AGENCY DKT. NO. 2023-35502

R.C. and S.C. ON BEHALF OF R.C.,

Petitioners,

v.

SOUTHERN REGIONAL BOARD

OF EDUCATION,

Respondent.

Staci J. Greenwald, Esq., for petitioners (Sussan, Greenwald & Wesler,
attorneys)

James L. Plosia, Jr., Esq., for respondent (Plosia Cohen, attorneys)

BEFORE **SARAH H. SURGENT, ALJ:**

Record Closed: April 13, 2023

Decided: April 14, 2023

STATEMENT OF THE CASE

In this matter, R.C. and S.C., on behalf of their daughter, R.A.C. (petitioners), bring an action for emergent relief against the Southern Regional Board of Education (Board). Petitioners seek an order that the Board provide an aide for R.A.C. so that she may partake in a voluntary five-day Senior trip to Disney World in Florida from April 20, 2023 to April 24, 2023 (the Senior Disney trip).

PROCEDURAL HISTORY

On February 24, 2023, this pro se matter was transmitted to and filed at the Office of Administrative Law (OAL) to be heard as a contested due process case, in due course. Due to the imminent timing of the trip, I expedited the matter pursuant to N.J.A.C. 1:1-14.6 (d) and (f). On April 11, 2013, petitioners then hired an attorney who filed a formal motion for emergent relief. The parties briefed the matter, and emailed their certifications of R.A.C.'s mother, S.C. (S.C.), and an opposition certification from Jonathan White (White), Director of Special Services for the Board. Approximately fifteen minutes before oral arguments, petitioners belatedly filed a reply to the Board's opposition to the motion for emergent relief, without my leave, giving the Board and this Tribunal no opportunity to meaningfully review and respond to petitioners' reply. I therefore disregard that reply, in the interests of justice, due process, and judicial economy. Oral arguments on the motion were heard on April 13, 2023, and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS OF FACT

These salient points are not in dispute. I therefore **FIND** the following as **FACT**.

R.A.C. is a nineteen-year-old twelfth-grade student in the District with Autism Spectrum Disorder and Attention-Deficit Disorder with an Intelligence Quotient of approximately fifty-four, placing her in the cognitively impaired range. She requires a paraprofessional aide, which the District provides on a 2:1 basis, in a self-contained

classroom. Her parents contend that she would like to attend the Disney trip with a 1:1 aide, and her parents would like the District to pay for that aide for the entirety of the trip. Due to R.A.C.'s disabilities, she will still remain a student through the 2024-2025 school year.

Although the District has provided R.A.C. with an aide for after school and extracurricular activities, the District maintains that it is not required to provide R.A.C. an aide for the Disney Senior trip, because it is purely for entertainment, and has no educational value. The District would permit R.A.C. to go on the trip if one of her parents accompanies her, or if her parents privately pay for an aide. Petitioners maintain that R.A.C. is entitled to an aide which the District should pay for, because petitioners cannot afford to pay for an aide, and R.A.C. is entitled to "educational programming" for a free and appropriate public education (FAPE), and should not be treated disparately from mainstream students.

LEGAL ANALYSIS AND CONCLUSIONS

I.

To prevail on a request for emergent relief in a special education matter, petitioners must demonstrate that their request falls within one of the four categories set forth in N.J.A.C. 6A:14.2.7(r), which provides:

(r) Either party may apply, in writing, for a temporary order of emergent relief as a part of a request for a due process hearing or an expedited hearing for disciplinary action, or at any time after a due process or expedited hearing is requested pending a settlement or decision on the matter. The request shall be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. The applicant shall provide a copy of the request to the other party. The request for emergent relief shall note that a copy was sent to the other party.

1. Emergent relief shall be requested only for the following issues:

- 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.

[N.J.A.C. 6A:14-2.7(r) (emphasis added).]

I **CONCLUDE** that none of those criteria apply to this case, and that the petitioners fail on this basis alone.

II.

N.J.A.C. 6A:14-2.7(s)1 provides, in relevant part:

1. Emergent relief may be requested according to N.J.A.C. 1:6A-12.1. Emergent relief may be granted if the administrative law judge determines from the proofs that:
 - i. The petitioner will suffer irreparable harm if the requested relief is not granted;
 - ii. The legal right underlying the petitioner's claim is settled;
 - iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
 - iv. 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.

[N.J.A.C. 6A:14-2.7(s)1 (emphasis added).]

In order to prevail on an emergent appeal from the District's decision, the moving party must demonstrate each of the above four elements "clearly and convincingly." Waste Mgmt. of N.J., Inc. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008) (emphasis added).

Irreparable Harm

Irreparable harm is a "substantial injury to a material degree coupled with the inadequacy of money damages." Judice's Sunshine Pontiac v. General Motors Corp., 418 F. Supp. 1212, 1218 (D.N.J. 1976) (emphasis added). An injunctive relief award requires a "clear showing of irreparable injury" or a "presently existing actual threat." Cont'l Grp. v. Amoco Chems. Corp., 614 F.2d 351, 359 (D.N.J. 1980) (internal quotation marks and citations omitted). "[M]ore than a risk of irreparable harm must be demonstrated." Ibid. (emphasis added.). The irreparable harm standard contemplates that the harm be both substantial and immediate. Subcarrier Communications v. Day, 229 N.J. Super. 634, 638 (App. Div. 1977). In addition, "[i]n order to demonstrate irreparable harm the plaintiff must demonstrate potential harm which cannot be redressed by a legal or an equitable remedy following a trial." Waterfront Comm'n of New York Harbor v. Philip Murphy, in his official capacity as Governor of New Jersey, et al., 2018 AMC 2222, 2242 (D.N.J. June 1, 2018).

I **CONCLUDE** that petitioners have failed to demonstrate by clear and convincing evidence that R.A.C. will suffer irreparable harm if the District does not pay for an aide or a parent to accompany R.A.C. throughout the five-day Senior Disney trip. R.A.C.'s parents have the option to pay for an aide, or to accompany R.A.C. themselves, at their own expense, and then seek monetary damages. Moreover, I find it hard to credit that R.A.C.'s parents would allow R.A.C. to miss the trip due to monetary concerns, when they chose to hire an experienced special education attorney to brief and argue this matter.

I therefore further **CONCLUDE** that because petitioners have not met the irreparable harm prong of the Crowe standard, I need not consider the other requisite Crowe factors, which would be a waste of judicial economy in this accelerated case.

Based on the foregoing, I **CONCLUDE** that petitioners have failed to clearly and convincingly establish all of the factors required by N.J.A.C. 6A:14-2.7(s)1 to obtain emergent relief, and I therefore **CONCLUDE** that their motion must be **DENIED**.

ORDER

It is therefore **ORDERED** that petitioners' motion for emergent relief be and is hereby **DENIED**.

As indicated by petitioners on the record, this decision on application for emergent relief resolves all of the issues raised in their due complaint regarding the Senior Disney trip. Therefore, no further proceedings in this matter are necessary.

This decision on application for emergent relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a District Court of the United States. 20 U.S.C. § 1415(i)(2). 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 14, 2023

DATE



SARAH H. SURGENT, ALJ

Date Received at Agency

Date Mailed to Parties:

SHS/sf

APPENDIX

Witnesses

For petitioners:

None

For respondent:

None

Exhibits

For petitioners:

P-1 Notice of Motion for Emergent Relief, dated April 11, 2023, and related certifications

For respondent:

R-1 Opposition to Motion for Emergent Relief and related certification, dated April 12, 2023