



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 07385-23

AGENCY DKT. NO. 2024-36351

**PASCACK VALLEY REGIONAL
BOARD OF EDUCATION,**

Petitioner,

v.

K.K. ON BEHALF OF B.K.,

Respondents.

Eric Harrison, Esq., for petitioners, Pascack Valley Regional Board of Education,
(Methfessel & Werbel, attorneys)

K.K., pro se

Record Closed: August 18, 2023

Decided: August 21, 2023

BEFORE **JULIO C. MOREJON**, ALJ:

STATEMENT OF THE CASE

Petitioner, Pascack Valley Regional Board of Education (the District) seeks an order by way of application for emergent relief to have respondent K.K. on behalf of B.K., release the student records for potential out-of-district placements.

PROCEDURAL HISTORY

On August 14, 2023, the District filed an application for emergent relief with the New Jersey Department of Education (NJDOE), Office of Special Education Policy and Procedure (OSE). The District seeks an order allowing it to send B.K.'s student records to four potential out-of-district placements pursuant to N.J.A.C. 6A:14-2.7(b).

The OSE transferred this matter to the Office of Administrative Law (OAL), for an emergency relief hearing, where it was filed on August 14, 2023.¹

On August 18, 2023, this matter was heard before me for oral argument via Zoom. Counsel for the District appeared and Eva Merck, Director of Special Services for the District was present. K.K. appeared *pro se*, and was assisted by Rose Ham, a Korean language interpreter.

The record closed on August 18, 2023.

FACTUAL SUMMARY

The following factual summary was provided by the District in the Certification of Eva Merk, (Merk), Director of Special Services, Pascack Valley Regional High School District. Respondent did not submit opposition to the within application for emergent relief.

Respondent, K.K., is the parent and guardian of B.K. B.K. was a student with the Montvale K to 8 School District through June 30, 2023. As of July 1, 2023, B.K. is a student with the Pascack Valley Regional High School District. Pascack Hills High School is the high school within the District where students residing in Montvale generally attend high school. At all relevant times, B.K. has been eligible for special education and related

¹ Respondent/parents have filed for mediation only with the NJDOE. The District along with the Montvale Board of Education, the student's previous placement, have filed a cross-petition for due process with OSE. Neither matter has been transmitted to the OAL by the OSE.

services under the IDEA and its New Jersey implementing regulations. He is presently eligible under the classification category of Other Health Impaired.

B.K. has a diagnosis of ADHD with poor executive functioning, and academic difficulties in oral language-based tasks and written expression. (Certification of Eva Merk, Exhibit A, Pediatric Neurodevelopmental Evaluation). B.K. also has a diagnosis of adjustment disorder with a disturbance of emotions of conduct and is suspected by a psychiatrist of having disruptive mood dysregulation disorder. (Certification of Eva Merk, Exhibit B, Psychiatric Evaluation).

B.K. has a significant history of both academic and persistent behavioral challenges in school, and in light of the same, for the 2022-2023 school year the Montvale School District (Montvale District) placed B.K. via an IEP in the Park Academy School, a K to 8 public, separate, therapeutic school that specializes in educating students with B.K.'s constellation of behavioral and academic challenges (Certification of Eva Merk, Exhibit C, District evaluation).

The Montvale District Child Study Team convened an IEP meeting on June 13, 2023 (June IEP meeting) to discuss B.K.'s program and placement for the 2022-2023 school year. K.K. attended the same. At the June IEP meeting, the Montvale District presented that B.K. continued to struggle behaviorally and academically during the 2022-2023 school year. (Certification of Eva Merk, Exhibit D, June IEP). Academically, B.K.'s teachers reported that he struggled to pay attention, required numerous accommodations and modifications, and generally could not keep up with grade-level work and pacing. Ibid.

As a result of the June IEP meeting, the school-based members of Montvale District's IEP Team, including Park Academy's staff, unanimously recommended that B.K. continue to attend a separate therapeutic school specializing in behavioral and academic difficulties and offering highly structured, and closely supervised, small class sizes. Ibid.

Because B.K. was aging out of Park Academy and the District does not have an in-district program as offered by Park Academy, the school-based members of Montvale's

IEP Team proposed placing B.K. at an out-of-district private school approved by the State of New Jersey for the education of students with disabilities, that could provide B.K. with a free appropriate public education in the least restrictive environment appropriate to his needs. Specifically, these four out-of-district placements: Brownstone School, Windsor Learning Center, Shepard School, or Chancellor Academy. Ibid.

At the June IEP meeting, the parents expressed concerns regarding the recommended program for B.K. The parents would like for B.K. to attend Pascack Hills High School in the general education setting. The parents shared that they feel that B.K.'s behavior has declined as the result of his placement at Park Academy. The parents requested that an FBA and a Psychiatric Evaluation be completed by their providers, and that the District reimburse them for these evaluations. Ibid.

Importantly, all four potential out-of-district placements have spaces available for B.K. for the 2023-2024 school year as of today. However, there is no guarantee that those spaces will remain available as the weeks pass and the commencement of the school year gets closer. The District does not have an appropriate in-district program for B.K. As a result, if the Respondent refuses to cooperate in the admission process for the potential out-of-district placement, B.K. will very likely be placed on home instruction for the beginning of the 2023-2024 school year (Certification of Eva Merk, ¶¶16-19).

Respondent has refused to consent to the District and Montvale District sending B.K.'s records to the four potential out-of-district placements, which is a prerequisite to gaining admission to them. Despite numerous requests by the District, K.K. continues to refuse to provide his permission to allow the District and Montvale District to send B.K.'s student records to the four potential out-of-district placements.

Respondent is not precluded from seeking their own out-of-district placement for B.K. Respondent's main argument was that he did not agree that B.K. has a "problem" as communicated to him at the June IEP meeting. Respondent expressed that he would not cooperate in the District's request to release B.K.'s records to the four potential out-of-district placements.

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.

Respondent/parents have filed for mediation only with the NJDOE. The District along with the Montvale District have filed a cross-petition for due process with OSE. The District presents that it does not have the placement program necessary to provide B.K. with FAPE, for the upcoming school year, and requests Respondents cooperation in the admission process for "potential out-of-district" placement commencing in September 2023. The District argues that without Respondent's cooperation as requested herein, B.K. will very likely be placed on home instruction for the beginning of the 2023-2024 school year, which the District concedes is not optimal for B.K.

I **CONCLUDE** it has been established the issue herein concern placement pending the outcome of a due process proceedings. N.J.A.C. 6A:14-2.7(r)iii.

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

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 petitioner, District bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34.

Here, the District has presented proofs in the form of the Certification of Eva Merk, along with the exhibits attached thereto, that it has satisfied all four prongs for emergent relief set forth in Crowe v. DeGioia and codified at N.J.A.C. 6A:3-1.6(b). Respondent's main argument was that he did not agree that B.K. has a "problem" as communicated to him at the June IEP meeting. Respondent expressed that he will not cooperate in the District's request to release B.K.'s records to the four potential out-of-district placements.

Moreover, the record reflects that no irreparable harm will be visited upon Respondent by granting the District permission to send B.K.'s records to Brownstone School, Windsor Learning Center, Shepard School, and Chancellor Academy, and compelling the Respondent to cooperate with the intake and admission process at any of these four schools which may be willing to consider B.K. for admission. This would simply be a step – a crucially important one – towards ensuring that B.K. receives a free appropriate public education (FAPE) in the least restrictive environment, to which he is legally entitled.

I **CONCLUDE** that having heard the arguments of the District, and Respondent, and considering all documents submitted herein, that the District has established the four-prongs required for emergent relief under Crowe, and N.J.A.C. 6A:3-1.6(b).

ORDER

IT IS ORDERED that having heard the arguments of the District, and Respondent, and considering all documents submitted herein, the District's application for emergent relief is **GRANTED**; and

IT IS FURTHER ORDERED that absent Respondent's cooperation, the District is granted permission to send B.K.'s records to Brownstone School, Windsor Learning Center, Shepard School, and Chancellor Academy, pursuant to N.J.A.C. 6A:14-2.7(b).

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.

August 21, 2023

DATE

Julio Morejon

JULIO C. MOREJON, ALJ

Date Received at Agency

August 21, 2023

Date E-Mailed to Parties:
JCM/lr

August 21, 2023
