



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

ON EMERGENT RELIEF

OAL DKT. NO. EDS 06201-21

AGENCY DKT.NO. 2022-34379

T.K. and J.K. ON BEHALF OF K.K.,

Petitioner,

v.

**MENDHAN TOWNSHIP BOARD OF EDUCATION
AND WEST MORRIS REGIONAL BOARD OF
EDUCATION,**

Respondent.

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

Jodi S. Howlett, Esq. for respondent (Cleary, Giacobbe Alfieri Jacobs LLC
attorneys)

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

Petitioners, T.K. and J.K. on behalf of their minor child K.K. filed a due process petition requesting K.K.'s placement in advanced level classes with a one to one special education teacher and removal of a one to one aide. The due process petition was filed

with the office of Administrative Law. On January 4, 2023, petitioner filed a motion for emergent relief requesting the District revise K.K.'s schedule effective January 14, 2023 placing him in U.S. History Advanced class with the support of a one to one special education teacher. Respondent filed opposition to the motion on January 10, 2023. Oral Arguments were held on January 19, 2023, during which time my decision was rendered on the record.

FACTUAL DISCUSSION

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

K.K. is a resident of Mendham. He is eligible for special education and related services under the category Autism. An IEP meeting was held on April 8, 2021. The IEP provided K.K. have the following related services: speech once per week in a small group for thirty minutes, speech three times per week for ten minutes, behavioral intervention consultant once per week for one hour and thirty minutes and one to one academic, behavioral support, specifically a special education teacher five times per week. The special education services were Language Arts five times per week in general education setting, mathematics five times a week in a general education setting, reading once per week in resource center, science five times per week in general education setting and social studies five times per week in a general education setting.

Mendham conducted triennial evaluations for K.K. in the Spring of 2022. Prior to the triennial evaluations, petitioners were told by his teachers that K.K. would be recommended for advanced level placement in his classes. After the evaluations petitioners were told that K.K. would be placed in academic level classes for the ninth grade.

An IEP meeting was held on March 8, 2022. That IEP provided that K.K. have the following related services: speech therapy once per week in a small group for thirty minutes, behaviorist consult once per week for sixty minutes and a one-to-one aide

daily. The special education classes were Algebra I academic level in an in-class resource program, biology Academic level I in-class resource program, U.S. history academic level in an in-class resource program and in and out of class support. On April 28, 2022, petitioners filed a petition for mediation.

Once K.K. was in the ninth grade at West Morris Regional, that District did not have a one-to-one special education teacher for K.K. The District hired a one to one special teacher for K.K. but that teacher could not begin with West Morris Regional until January 2023. Petitioner signed a waiver for K.K. to be placed in advanced level History class beginning in January 2023. This was denied by West Morris Regional.

K.K. stated to his psychologist, Dr. Meir Flancbaum, that the classes at West Morris Regional are boring, and he is assigned little to no homework. In addition, students in his history class are irritating, talk out of turn are disrespectful to the teacher and use their cell phones in class without permission. He feels that K.K. will regress significantly if he is continued in his placement.

K.K.'s pediatric neurologist, Andrea Richards stated in April 2022 K.K.'s current IEP (April 2021) supports work well and should be keep in place.

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 case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b). Petitioner has not demonstrated that K.K. will suffer irreparable harm. Although Dr. Flancbaum stated he believes that K.K. will regress, there is no evidence that he has regressed academically. In addition, K.K.'s pediatric neurologist did not recommend K.K. be placed in advanced classes, she stated that the Mendham IEP was the appropriate placement for K.K.

Petitioners provided no argument that they have a likelihood of prevailing on the merits, the legal right underlying their claim is settled or when the equities and interests of the parties are balanced, the E.A. will suffer greater harm than the respondent will suffer.

N.J.A.C. 6A:14-2.7u provides:

Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program, or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided at 20 U.S.C. § 1415. (k)4. (See N.J.A.C. 6A:14 Appendix A.)

In this matter, the stay-put is the placement from the April 8, 2021 IEP which did not provide for K.K. to be in advanced classes in any subject. The issue of the due process matter is whether K.K. not being placed in advanced classes is a violation of FAPE. Petitioners have not shown that the law is settled or that they have a likelihood of prevailing K.K. not being placed in advanced classes violated FAPE.

In this case, after hearing the arguments of petitioner and respondent and considering the documentation submitted, I **CONCLUDE** that petitioner has not met the requirement of N.J.A.C. 6A:3-1.6(b).

Accordingly, 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.

January 23, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

January 23, 2023

Date Mailed to Parties:

January 23, 2023