State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION DENYING EMERGENT RELIEF

OAL DKT. NO. EDS 00852-23

AGENCY REF. NO. 2023-35393

M.F. ON BEHALF OF MINOR CHILD A.M.,

Petitioner,

v

MOUNT LAUREL TOWNSHIP BOARD OF EDUCATION,

Respondent.

M.F., petitioner, pro se[1]

Emily E. Strawbridge, Esq., for respondent (Parker McCay P.A., attorneys)

BEFORE **JEFFREY N. RABIN**, ALJ:

Record Closed: February 2, 2023 Decided: February 3, 2023

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner seeks emergent relief in the form of an immediate order returning the student, A.M., to an in-district program at Harrington Middle School instead of his out-of-district placement with supports at the Burlington County Special Services School District

[1] A.M.'s father, D.M., did not participate in this matter.

(BCSSSD), and wants a Manifestation Determination from May 31, 2022, to be voided. Petitioner also filed a due process petition seeking an appropriate program and placement and disputing the results of the Manifestation Determination of May 31, 2022, which has not yet been transmitted to Office of Administrative Law (OAL) and remains with the New Jersey Department of Education (DOE), Office of Special Education (OSE). Respondent, the Mount Laurel Township Board of Education (Mount Laurel, Board or District), opposed the request for emergent relief.

The within motion for emergent relief was filed by petitioner on January 23, 2023, with OSE. The motion for emergent relief was transmitted to OAL on January 24, 2023. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13. Due to the ongoing Covid-19 pandemic protocols, an emergent hearing in this matter took place via Zoom on February 2, 2023, and the record closed.

FINDINGS OF FACT

Based on the Petition for emergent relief and letter brief, respondent's brief, and the evidence and testimony offered by the parties and their representatives, and solely for the purpose of deciding this emergent appeal, I **FIND** the following to be the undisputed facts:

1. Fourteen-year-old minor child, A.M., was enrolled as a student in the District. A.M. was eligible for special education and related services. He had been diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), impulsive behavior and emotional dysregulation, and was on various medications.
2. A.M. engaged in behaviors that were disruptive, threatening, violent and/or dangerous to students, staff and himself several times during the 2021-2022 school year. As a result, the District implemented interventions and supports for A.M.'s behavior through his Individualized Education Program (IEP). Despite these interventions, A.M.'s behaviors continued to escalate.

3. On May 27, 2022, A.M. sent a photograph of himself posing with a handgun to a group of students over social media, threatening another student or students in an attempt to support a friend who had allegedly been intimidated by others. Incident) After an investigation into the Incident, and to preclude a District disciplinary hearing and possible suspension or expulsion of A.M., the petitioner and the District entered into a Settlement Agreement. (R-Exhibit D.) A.M. was subsequently placed on an out-of-school suspension beginning June 1, 2022, in accordance with the Mount Laurel School District Policies for student discipline. (R-Exhibit A.)
4. On May 31, 2022, a Manifestation Determination meeting was conducted. The Child Study Team (CST) determined that A.M.'s conduct was not a function of A.M.'s disability. (R-Exhibit B.) Petitioner alleged that she was not given any advance notice of the meeting.
5. On June 16, 2022, petitioner M.F., represented by an attorney from South Jersey Legal Services, agreed to a change in placement to home instruction for the remainder of the school year, pending an out-of-district placement for the 2022-2023 school year, as set forth in the June 16, 2022, IEP Amendment Consent form and the IEP, executed by petitioner M.F. (R-Exhibit C.)
6. With petitioner's consent, the District sent A.M.'s records to several out-of-district placements. The District and petitioner then attended several IEP meetings in July and August to discuss possible out-of-district placements and programs for A.M. for the 2022-2023 school year.
7. On September 2, 2022, the District offered an IEP for the 2022-2023 school year with placement at the Burlington County Special Services School District (BCSSSD), which petitioner consented to after consulting with legal counsel. (R-Exhibit E.). Petitioner alleged that while A.M. was receiving As and Bs at Harrington Middle School, he had not performed as well at BCSSSD, and that A.M. was no longer learning at the proper level.

TESTIMONY

For petitioner:

M.F. was the mother of A.M. While she executed a settlement agreement to preclude a disciplinary hearing, she did so only because she was misled by the respondent, after they threatened to expel A.M. Any changes to A.M.'s IEP were done without her input. A.M. was a bright student who was not receiving an age-appropriate education. She felt he would fall behind if he stayed at BCSSSD. There had been inconsistent IEP supports, such as A.M. not receiving his full break times during the school day. A.M. had been attacked by another student on December 22, 2022, based on information provided by her mother who worked at BCSSSD. She feared that A.M. might be attacked again. A.M. was a very social boy but was not with peers because he was in one class with a 1:1 teacher/student ratio, and therefore he was losing socialization skills.

LEGAL ANALYSIS

The issue is whether petitioner had proven by a preponderance of the evidence that she had met the standard for emergent relief and that she was entitled to relief.

N.J.S.A. 18A:6-9 authorizes the Commissioner of Education to consider controversies between a parent and a school board. The OAL is the appropriate venue for hearing an appeal of a school board's findings and OSE properly forwarded this matter to the OAL for this emergent appeal to be heard.

N.J.A.C. 6A:14-2.7(r) allows a party to apply in writing for a temporary order of emergent relief as part of a request for a due process hearing or an expedited hearing for disciplinary action. The request needed to be supported by an affidavit or notarized statement specifying the basis for the request for emergency relief. N.J.A.C. 6A:14-2.7(r)(1) lists the cases emergent relief is available for, which includes issues involving (i) a break in the delivery of services, (ii) disciplinary action, including manifestation determinations and determinations of interim alternate educational settings, (iii)

placement pending the outcome of due process proceedings, and (iv) issues involving graduation or participation in graduation ceremonies.

Petitioner's Certification sought to address all four areas. However, the within Petition raised no issues regarding (iv) graduation or graduation ceremonies. Regarding (i) a break in services, after a short period of home schooling to complete the 2021-22 school year, A.M. had been attending school at BCSSSD, pursuant to an IEP. There was no break in educational services.

Regarding (ii) disciplinary action, including manifestation determinations and determinations of interim alternate educational settings, and (iii) placement pending the outcome of due process proceedings, petitioner has filed a due process petition simultaneously with the within request for emergent relief, based on her challenge of a manifestation finding, and therefore I **CONCLUDE** that the within Petition for Emergent Relief met two of the threshold issues required to be eligible for emergent relief.

Next, as set out in the Certification in Lieu of Affidavit or Notarized Statement of Petitioners Seeking Emergent Relief (Certification) executed by petitioner, and pursuant to N.J.A.C. 6A: 3-1.6 and the case of Crowe v. DeGioia, 90 N.J. 126 (1982), a petitioner must show by a preponderance of the evidence that all four prongs/prerequisites set forth therein had been met in petitioner's favor in order to be granted emergent relief.

A petitioner bears the burden of proving the four prongs for emergent relief. B.W. ex rel. D.W. v. Lenape Reg'l High Sch. Dist., OAL Dkt. No. EDS 06933-05, Agency Ref. No. 2006-10522E, at 8 (N.J. Adm); see also J.G. ex rel. Q.B. v. Bd. of Educ. of Lakewood, OAL Dkt. No. EDU 10073-03, Agency Ref. No. 466-12/03, at 6 (N.J. Adm); R.D. ex rel. C.D. v. Willingboro Bd. of Educ., 95 N.J.A.R.2d 190, at 2.

Per N.J.A.C. 6A: 3-1.6 and Crowe, emergent relief may be granted if the judge determines from the proofs that the following four prongs have been met:

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.

Petitioner submitted a memorandum to this court the night before the within hearing, replying to respondent's brief. She argued that petitioner met all four prongs for emergent relief.

Respondent argued that petitioners did not meet all four prongs of the Crowe test.

1. The petitioners will suffer irreparable harm if the requested relief is not granted.

Petitioners did not argue irreparable harm in their moving papers. She argued at the hearing that A.M. had performed better at Harrington Middle School in the District, receiving As and Bs, but was underperforming at BCSSSD, where it was determined that A.M. needed a learning consultant. Petitioner alleged that A.M. had been attacked by another student at BCSSSD on December 22, 2022, but that information was based on information provided by M.F.'s own mother who worked at BCSSSD; petitioner offered no other evidence or witness testimony regarding that alleged event. Based on that, she feared that A.M. could be attacked again, and therefore met the standard for irreparable harm. In petitioner's moving papers, petitioner alleged that A.M. had been bullied at Harrington Middle School, which was why he behaved poorly. Petitioner also argued irreparable harm because there was no Honors Geometry course at BCSSSD, forcing

them to bring in an outside teacher, who provided inadequate instruction. A.M. was receiving insufficient socialization at BCSSSD.

Respondent correctly argued that injunctive relief was an extraordinary remedy used to prevent irreparable harm. Hammer v. New Jersey Voice, Inc., 302 N.J.Super. 169 (Law Div. 1996). Irreparable harm necessary for the moving party to be entitled to equitable relief was harm that cannot be redressed by money damages. Murray v. Lawson, 264 N.J.Super. 17, (App. Div. 1993). In other words, the petitioner must demonstrate that they have suffered an injury that cannot be adequately redressed by a legal or equitable remedy following trial, and an injunction is the only way of protecting A.M. from harm. Gruntal & Co., Inc. v. Steinberg, 854 F. Supp. 324 (D.N.J. 1994). "Generally, irreparable harm may be shown when there is a substantial risk of physical injury to the child or others, or when there is a significant interruption or termination of educational services." C.B. o/b/o C.B. v. Jackson Twp. Bd. of Educ., OAL Dkt. No. EDS 04153-09, 2009 N.J. AGEN LEXIS 592 (Sept. 9, 2009).

Respondent correctly argued that there had been no interruption in services; after the Settlement Agreement and out-of-school suspension, A.M. was home-schooled for the remainder of the 2021-22 school year, and then matriculated at BCSSD for 2022-23. Further, BCSSD made arrangements to ensure that A.M. continued to receive advanced mathematics classes, as well as additional reading and language classes.

Petitioner also failed to prove a substantial risk of physical injury to A.M. She stated in her Petition that A.M. had been bullied at Harrington Middle School yet was willing to return him there, rather than risk speculative potential harm at BCSSSD. While in petitioner's opinion A.M. was not performing as well academically at BCSSD as at Harrington Middle School, she offered no documentation or outside testimony to confirm that. In fact, she stated several times that A.M. had not had any behavioral issues at BCSSD for the last five months; it may then be concluded that A.M. was showing improvement in behavioral skills at BCSSD. While petitioner alleged without evidence that A.M. had suffered an attack in December 2022, she had stated in her Petition that A.M. had been held responsible for that incident because A.M. had been teasing the other student.

The "irreparable harm" standard contemplated that the harm be both substantial *and* immediate. Subcarrier Communications, Inc. v. Day, 299 N.J.Super. 634, 638 (App. Div. 1997). Irreparable harm included that the occurrence of harm was imminent. A. Hollander & Sons, Inc. v. Imperial Fur Blending Corp., 2 N.J. 235, 249 (1949), but not where a mere inconvenience may occur. B&S Ltd. v. Elephant & Castle Intern, Inc., 388 N.J.Super. 160 (Ch. Div. 2006). In the within matter, petitioner's claims of possible risks of physical violence against A.M. were speculative, and neither substantial or immediate/imminent.

Petitioner testified that the school psychiatrist cleared A.M. to return to school, either for home schooling, Harrington Middle School, or other learning options. That psychiatrist deferred to A.M.'s CST, which CST recommended out-of-district schooling at BCSSD. Accordingly, petitioner failed to show any risk of irreparable harm if A.M. continued at BCSSSD until the underlying due process case was completed.

I **CONCLUDE** that petitioner failed to show that the first prong of the Crowe test for emergent relief had been met in favor of the petitioners.

2. The legal right underlying the petitioner's claim is settled.

Petitioners, in their moving papers, failed to argue that the legal right underlying petitioner's claim was settled. Petitioner cited, at the hearing, the Individuals With Disabilities Education Act (IDEA), referencing 71 Federal Register 46721, section 6a 14-2.8. This appeared to be a conflation of IDEA and N.J.S.A. 6A:14-2.8, which addresses disciplinary matters. Neither reference, however, makes it clear that the legal right under petitioner's claim was settled. While a board must enforce an IEP, that is not the primary issue in the Petition for emergent relief; petitioner, with the aid of legal counsel, executed a settlement agreement in order to preclude further disciplinary actions, and executed an

amendment to A.M.'s IEP as well as a new IEP. The District had been effectuating the very IEP that petitioner had agreed to.

Petitioner also argued the applicability of Goss v. Lopez, 419 U.S. 565 (1975). She claimed that it set forth that parents must be given proper notice of charges and evidence to be used in a disciplinary case. But that case did not apply to petitioner's challenge of the Manifestation Determination. There was no disciplinary hearing here because petitioner waived her rights to a disciplinary hearing by entering into a settlement agreement with the Board. Further, in that settlement agreement petitioner released the District from any disciplinary claims.

Respondent argued that the legal right underlying petitioner's claim was not well settled, as the parent agreed to the initial change in placement to home instruction and subsequent change in placement to BCSSSD. That IEP was the last agreed upon placement and, therefore, A.M.'s placement at BCSSSD constituted "stay put." The District did not unilaterally change the placement, but rather worked with the parent through the IEP process. As the District had continued to provide the program and placement agreed upon by the parent, and had not suggested changing that placement, and because petitioner failed to offer statutory or caselaw support for disturbing "stay put," there would be no legal basis for emergent relief. The legal right underlying petitioner's claim was not well settled.

Accordingly, I **CONCLUDE** that petitioners failed to show that the second prong of the Crowe test for emergent relief had been met in favor of the petitioner.

3. The petitioner has a likelihood of prevailing on the merits of the underlying claim.

Petitioner, in her moving papers, failed to argue that she was likely to prevail on the merits of the underlying case. Her brief and oral arguments at the hearing failed to support her belief that she would succeed at the underlying due process hearing.

Respondent argued that in analyzing the third prong of the standard for emergent relief, the District had a substantial likelihood of success on the merits of the underlying claim. The program offered was done in consultation with the full IEP CST team, including the student's parent. A.M.'s mother had legal representation during the IEP process, from South Jersey Legal Services. The program being provided by the District was specifically designed to meet both the academic and behavioral needs of A.M., which included Geometry instruction at BCSSSD through the District, as well as after school literacy instruction. Again, this IEP and program were consented to by petitioner.

I **CONCLUDE** that petitioner failed to show that the third prong of the Crowe test for emergent relief had been met in favor of the petitioner.

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.

Petitioner, in her moving papers, failed to argue that when the equities and interests of the parties were balanced, the petitioner would suffer greater harm than the respondent would suffer if the requested relief was not granted. During oral argument regarding the balancing of equities at the emergent hearing, petitioner claimed that A.M. was not in classes appropriate to his age group, and therefore he was falling behind his peers. This claim was unsupported by any documentation or outside testimony. Petitioner also claimed there was a risk of physical harm to A.M., based on an alleged attack from December 2022. Petitioner stated that the District would suffer no harm if the emergent relief were granted.

Conversely, respondent argued that a balancing of the equities and the interests of the parties would weigh in favor of the District. Prior to the agreed upon change in placement, the student exhibited significant behaviors that posed a threat of harm to himself and others. The District unsuccessfully attempted to address these behaviors with interventions and supports. The behaviors continued to escalate during the 2021-2022 school year, culminating in A.M. sending a threatening photograph of a handgun to another student. It was irrelevant whether the handgun in the photograph was a

functioning or real handgun; it was clear that A.M. intended to threaten another student with gun violence. As such, the District, along with the petitioner, pursued placement in a setting that could address A.M.'s needs. These behaviors were being addressed in the current BCSSD placement. If the District were to abruptly return the student to the District, without the support provided by the current placement, there would be a significant risk of harm to the student or other students and for the District, as his return may expose the District to potential liability and litigation if something unfortunate occurred.

I agree with respondent's arguments. Petitioner failed to show any immediate irreparable harm to be suffered by A.M. That lack of harm must be balanced against the District's responsibility for educating and protecting the thousands of students who attend school daily in their district. The State and school District have rules and regulations in place for addressing threats of violent behavior. Unfortunately, gun violence in America, particularly in schools, has reached a dire level. A school district has a great responsibility for addressing gun violence. Again, it is irrelevant that the gun in the photograph sent by A.M. on social media turned out to allegedly be a toy gun; the District must, and did in this situation, take such threats seriously. It was irrelevant whether A.M. was standing up for another student who allegedly had been bullied when he threatened gun violence against a student. The District saw a threat of gun violence against students and took measures to protect students' safety. Even considering the District's proper exercise of its responsibilities here, they still worked with petitioner to get A.M. into a situation where his behaviors would be addressed as well as his academics. A balancing of the equities clearly weighs in favor of the respondent District.

I **CONCLUDE** that petitioner failed to show that the fourth prong of the Crowe test for emergent relief had been met in favor of the petitioner.

Therefore, I **CONCLUDE** that petitioner failed to show by a preponderance of the evidence that she met any of the four prongs of the Crowe test for emergent relief. I **CONCLUDE** that petitioner failed to prove that she was entitled to emergent relief in this matter.

ORDER

Accordingly, **I ORDER** that the petitioner's application for emergent relief be and hereby is **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.

February 3, 2023
DATE

JEFFREY N. RABIN, ALJ

Date Received at Agency: February 3, 2023

Date Mailed to Parties: February 3, 2023

JNR/dw

APPENDIX

WITNESSES

For petitioner:

M.F., petitioner

For respondent:

None

BRIEFS/EXHIBITS

For petitioner:

Petition and Certification, dated January 23, 2023, with Certification in Lieu of Affidavit or Notarized Statement of Petitioner Seeking Emergent Relief Attached

Reply Brief, dated February 1, 2023

For respondent:

Brief in Response to Petition for Emergent Relief dated January 27, 2023

Exhibit A	Mount Laurel School District Policies for student discipline
Exhibit B	Manifestation determination, dated May 31, 2022
Exhibit C	IEP Amendment Consent form and IEP, dated June 16, 2022
Exhibit D	Resolution Agreement, dated June 16, 2022
Exhibit E	IEP, dated September 2, 2022