



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL Docket No.: EDS 12006-23

Agency Ref. No.: 2024-36708

W.S. ON BEHALF OF W.S.,

Petitioner,

v.

ELIZABETH CITY BOARD OF EDUCATION,

Respondent.

W.S., pro se

Richard P. Flaum, Esq., respondents, Elizabeth City Board of Education,
(DiFrancesco Bateman, Kunzman, Davis, Lehrer & Flaum, LLC, attorneys)

Record Closed: November 14, 2023

Decided: November 15, 2023

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

STATEMENT OF THE CASE

Petitioner, W.S. on behalf of W.S., seeks an order by way of application for emergent relief to have respondent, Elizabeth City Board of Education, place the student in a private school pending the due process petition filed herein. Petitioner seeks an appropriate school placement for the student; as the student was terminated from an agreed upon out of district placement and has been out of school for two months without instruction in accordance.

PROCEDURAL HISTORY

On October 31, 2023, petitioner W.S. on behalf of the student W.S. (the student will be referred to as "W.L.S.", because of the same initials of the petitioner and student) filed with the New Jersey Department of Education (Department of Education) Office of Special Education Policy and Procedure (OSP) a Petition for Due Process (Petition), and on November 2, 2023, petitioner filed a request for emergency relief seeking an order to have respondent, Elizabeth City Board of Education (the District) place the student in a private school pending the due process petition filed herein. Petitioner seeks an appropriate private school placement for the student providing Free Appropriate Public School Education (FAPE), as the student was terminated from an agreed upon out of district placement in late September 2023, and has been out of school for two months without instruction in accordance.

On November 2, 2023, as required by New Jersey Administrative Code (N.J.A.C.) 1:6A-12.1, OSE forwarded the request for emergent relief to the Office of Administrative Law (OAL) for a hearing on the emergent issues stated in the request. The same was filed with the OAL on November 3, 2023.

An initial telephone status conference was held on November 9, 2023. Due to the District's school closure on November 10, 2023, for a teacher conference, and November 11, 2023, for the Veteran's Day Holiday, oral argument was adjourned from Monday, November 13, 2023, to November 14, to allow the parties an opportunity to amicably resolve the underlying emergent relief issues. No settlement having occurred, on November 13, 2023, the District filed its opposition to the emergent relief.

On November 14, 2023, oral argument was heard at the OAL. Petitioner, W.S, appeared and T.P., the student's mother, appeared via telephone.

SUMMARY

W.L.S. is a 14 year old student who has been classified for special education and related services under “Severe Intellectual Disability” category. W.L.S. had been placed by the District at Kohler Academy, an out of District program from the age of six until August 2023. Kohler advised the parties that they were not able to meet W.L.S.’s behavioral needs at that time. Following an intake at Future Foundations School, attended by the case manager, W.L.S. and Petitioner WS, W.L.S. was accepted to Future Foundations.

W.L.S. commenced attending Future Foundations on September 7, 2023, and a week later Future Foundations advised the District and Petitioner that they did not believe they were the right school for W.L.S. Discussions arose regarding interventions that could be implemented to assist in the transition, such as using the break room, sensory room, different sensory tools, and the AAC device.

On September 28, 2023, a virtual meeting was held with the case manager supervisor, Maria Yurecko, Future Foundations staff, and W.L.S.’ parents, W.S. and T.P. The District and Petitioner and T.P. were notified that the Future Foundations made the decision to terminate W.L.S. Following the September 28 meeting, an Individualized Education Plan (IEP) was created for home instruction commencing October 12, 2023, through December 11, 2023, of 120-minutes per day. (An IEP for the 2023-2024 school year had been created in June 2023). The District seeks to provide the student home instruction until such time that he can be placed in an appropriate out of district placement.

Following the termination of services at Future Foundations, the District scheduled home instruction pending a new placement. However, the parents refused home instruction based on information provided to them by an “advocate”. Following the termination of services at Future Foundations, the case manager contacted 12 schools in order to locate and secure a new school placement for W.L.S. Out of those 12 schools, only one school, Children Center of Monmouth, scheduled an intake for November 29, 2023. The District states that the schools contacted are either experiencing staff shortages or have no openings for W.L.S.’s age group.

On Monday, November 6, 2023 the case manager met with Petitioner and obtained consent to reach seek placement at 6 additional schools. In addition, the District has scheduled home instruction for W.L.S. for November 14, 2023, at 5:00PM. As of the time of oral argument, W.L.S.'s parents had not confirmed if they would consent to home instruction for W.L.S.

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.

There is no dispute that W.L.S. has not been provided with the instruction program pursuant to an IEP of June 2023, for the subject school year, due to the Future's Foundation decision to terminate W.L.S. in September 2023. Therefore, I **CONCLUDE** it has been established the issue involves a break in the delivery of services pursuant to N.J.A.C. 6A:14-2.7(r) i.

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 bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132–34, and has not presented any proofs to establish that all four prongs required by Crowe have been satisfied. The proofs provided by the District show that the District with the consent of Petitioner had placed W.L.S. at the Futures Foundation for the 2023-2024 school year in accordance with the June 2023 IEP. However, due to the unilateral decision by the Futures Foundation to terminate W.L.S. from its program, the student was left without an appropriate placement in accordance with the June 2023 IEP.

The proofs further reflect that the District has prepared an IEP to provide the student with home instruction until such time that an appropriate out of district placement can be found. The District awaits the consent of Petitioner to commence the same.

I **CONCLUDE** that having heard the arguments of W.S., and the District, and considering all documents submitted herein, that Petitioner has not 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 W.S., and the District, and considering all documents submitted, Petitioner’s application for emergent relief is herein **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2018) 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); 34 C.F.R. § 300.516 (2018). 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.

November 15, 2023

DATE

Julio Morejon

JULIO C. MOREJON, ALJ

Date Received at Agency

November 15, 2023

Date E-Mailed to Parties:
JCM/lr

November 15, 2023
