



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER ON MOTION
FOR EMERGENT RELIEF

OAL DKT. NO. EDS 12601-23

AGENCY DKT.NO. 2024-36742

**BERKELEY HEIGHTS TOWNSHIP BOARD OF
EDUCATION,**

Petitioner,

v.

D.K. & J.K. ON BEHALF OF M.K.,

Respondent.

Douglas F. Dresher, Special Education Advocate for petitioners

Charolyn R. Chaudry, Esq. for respondent on behalf of respondents
(Chaudry Law)

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

STATEMENT OF THE CASE

The Berkeley Heights Township Board of Education (District) brings a cross motion for temporary home instruction while M.K. completes the Intensive Therapy Program (IOP) program and the District seeks an out of district placement. D.K. and J.K. on behalf of minor child M.K., brought an emergent action seeking for M.K. be returned to Governor Livingston High School with appropriate IEP supports and Effective School Services (ESS) program.

PROCEDURAL HISTORY

On November 13, 2023, the Office of Special Education Programs transmitted Parents matter to the Office of Administrative Law (OAL) for emergent disposition. On November 14, 2023, the Office of Special Education Programs transmitted the District's matter to the Office of Administrative Law (OAL) for emergent disposition as well as a due process hearing. The district filed opposition to the motion of Parents on November 15, 2023, under OAL Docket Number EDS 12601-23. Oral arguments were held on November 16, 2023.

FACTUAL DISCUSSION

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

M.K. was a student at Governor Livingston High School in Berkeley Heights. She receives special education services. In January 2022, M.K. had a psychiatric evaluation done by Dr. Richard Kleinmann, who recommended consideration of whether M.K. would benefit from participation in a partial day program such as High Focus centers or Gen Psych.

An IEP meeting was held on January 2, 2023. It was determined that a therapeutic day school should be considered for M.K. The parents rejected this and it was agreed that a partial school day schedule would be used. M.K. would come to school for one class per day, which would increase to four classes per day. She would have home instruction for her other classes. M.K. was unable to attend those classes. The school psychologist could not deescalate M.K. when dysregulated.

An IEP meeting was held on January 31, 2023, where the IEP team recommended home instruction pending an alternative placement at a therapeutic day school. The parents agreed to this. When the out-of-the-district schools offered intakes for M.K., the parents changed their mind and contested going to the intakes.

M.K. had a psychiatric evaluation in February 2023 by Dr. Jacob Jacoby who recommended M.K. be in a more comprehensive academic environment that could offer her counseling such as Rutgers Behavioral Health.

An emergent relief motion was heard in March 2023. The result of that was the stay-put which was a continuation of the partial day schedule with an increase in attendance if possible.

The parties subsequently entered into a settlement where the parents agreed to visit three out of district placements and the District would pay for an independent Neuropsychological evaluation. The independent evaluator, Dr Jonathan Mack recommended that M.K. enter a partial hospitalization program and then attend Princeton House. Dr. Mack diagnosed M.K. with Disruptive Mood Dysregulation Disorder, Other Specific Neurodevelopmental Disorder with executive function and to some degree working memory and processing speed deficits, Developmental Coordination Disorder, Generalized Anxiety Disorder, Other Specified Personality Disorder with nascent borderline and narcissistic features, Specific Learning Disorder with impairment in reading: word reading accuracy, reading rate or fluency, reading comprehension, mild to moderate, rule-out autism spectrum disorder and rule out attention-deficit/hyperactivity disorder combined presentation. Dr. Mack believes that M.K. should be treated by a board-certified child and an adolescent psychiatrist. The parents did not follow Dr. Mack's recommendation.

The District contracted with ESS to provide tier three services to M.K. for the 2023-2024 school year. This is the highest level of services provided to districts. M.K. was to get group therapy twice a week, individual therapy once a week, family therapy twice a month and monthly parent support groups. M.K. refused to attend the group therapy. She did not attend scheduled individual therapy sessions but seeks out ad hoc sessions and occasionally therapeutic check-ins.

On October 4, 2023, the IEP team wanted M.K. to have a higher level of care, an evaluation of M.K. and an intensive therapy program. The parents resisted this. The

Parents' advocate requested four weeks for further information and to see if M.K.'s attendance, participation and engagement in class would improve. The District agreed but noted if this failed that M.K. would be placed on home instruction pending an out of district therapeutic placement.

On October 11, 2023, M.K. in an ESS session, became agitated and stated that she wanted to kill herself. M.K. was unable to deescalate where she was able to communicate a plan for her safety. She was engaging in self-harm by scratching herself and pulling her hair. The District recommended that M.K. have immediate follow-up with a psychiatrist or be taken to the emergency room. A risk assessment was done. Rafael Contreas, an APN, DNP met with Parents and M.K. He completed a school re-admittance for M.K. on October 16, 2023.

On October 24, 2023, M.K. went to ESS to report a classroom trigger. She became aggressive and was unable to deescalate. She engaged in self-harm and stated, "You are going to make me kill myself." A risk assessment was done at that time. The District attempted to follow up with the parents who refused to take the risk assessment paperwork.

On October 30, 2023, the District spoke with Contreras who stated that he sees M.K. briefly each month for medication modification and monitoring. He agreed that M.K. would benefit from a placement where she can receive a higher level of care. A note from Contreras dated November 3, 2023, states that his recommendation is that M.K. engage in an IOP and once the higher-level treatment is completed, then she should be able to return to school. ESS recommended that M.K. receive a higher level of care.

M.K. displays explosive behaviors and inappropriate language toward peers and staff and resistance to using de-escalation techniques. She is inconsistent in her attendance at school. In her history class as of October 4, 2023, M.K. attended class thirty-two percent of the time and was absent sixty-eight percent of the time. In English

class for that time M.K. was present fifty-three percent of the time and absent forty-seven percent of the time.

One teacher stated that M.K. makes disparaging and accusatory comments about other students in class. These students become hesitant or afraid to participate. M.K. has negatively impacted the students in the ALL room, which is a place where students can work and get academic assistance. M.K. has come into the room yelling, cursing and throwing papers of work that she has to complete. When she did this a student became visually disturbed and unable to communicate during M.K.'s presence. M.K.'s screaming and slamming of objects, her cursing and threatening while in the ESS room can be heard outside of the ESS room. This made the students in the class near the ESS room uncomfortable, the students had to make edits to its film project to eliminate M.K.'s loud cursing. M.K.'s outbursts from the ESS room can be heard in the library. When M.K. is dysregulated, she engages in self-harm.

On November 13, 2023, Gen Psych provided a letter stating that while M.K. was in their care, she denied homicidal and suicidal thoughts and does not present a danger to herself or others and is cleared to attend school.

M.K. is currently receiving her classes by home instruction. The District's position is that it cannot provide FAPE to M.K. at the Governor Livingston High School.

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.

The first criteria is irreparable harm. The District will suffer irreparable harm because the outbursts of M.K. effect other students making them hesitant and in one case unable to communicate. She has also had Suicide ideations while in school. When she is dysregulated, the District cannot deescalate her behaviors. She also engages in self-harm when she is dysregulated. In addition, the District has a duty to provide a free and appropriate education to M.K. Dr. Jacoby and Dr. Mack both recommend a higher level of care for M.K., ESS recommends a higher level of care for M.K. and Contreras agrees that M.K. would benefit from a higher level of care. The District has proven irreparable harm.

N.J.A.C. 6a:14-2.7(n) provides:

To remove a student with a disability when district board of education personnel maintain that it is dangerous for the student to be in the current placement and the parent and district board of education cannot agree to an appropriate placement, the district board of education shall request an expedited hearing. The administrative law judge may order a change in the placement of the student with a disability to an appropriate interim alternative placement for not more than 45 calendar days according to 20 U.S.C. § 1415.(k) and its implementing regulations at 34 CFR Part 300;

In this matter, M.K. is explosive and dysregulates which the District cannot deescalate. She also inflicts self-harm. She had two suicide ideations while she was at school. It is dangerous for M.K. to be at Governor Livingston High School. In addition, two doctors, Contreras and ESS state that she needs a higher level of care that cannot be given at Governor Livingston high school. The right underlying the District's claim is settled, there is a likelihood of prevailing on the merits and when balancing the interests of the parties, the District will suffer greater harm if the relief is not granted.

I **CONCLUDE** that the District has met the requirements of N.J.A.C. 6A:3-1.5(b).

ORDER

Based on the foregoing, it is **ORDERED** that the petition for emergent relief in this matter be and is hereby **GRANTED**. M.K. will be placed on home instruction for forty-five days and complete the IOP program and follows the recommendations of that program while the District seeks an out of district therapeutic placement for M.K.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The parties will be notified of the scheduled hearing dates. 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.

November 17, 2023



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency

November 17, 2023

Date Mailed to Parties:

November 17, 2023

ljb