



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENT RELIEF

OAL DKT. NO. EDU 05044-16

AGY REF NO. 100-4/16

**J.L, ON BEHALF OF HER MINOR
CHILD T.D.,**

Petitioner

v.

**BOARD OF TRUSTEES OF THE NORTH STAR
ACADEMY CHARTER SCHOOL, ESSEX COUNTY**

Respondent,

Shira Baron, Esq., for Petitioner (Education Law Center, attorneys)

Cherie L. Adams, Esq., for Respondent (Adams, Guitierrez & Lattiboudere,
LLC, attorneys)

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioners filed a Verified Petition and Motion for Emergent Relief with the Office of Controversies and Disputes in the New Jersey Department of Education (DOE) on

April 1, 2016. In support of the Motion for Emergent Relief petitioners also filed an Affidavit of petitioner J.L. and a brief in support of the motion.

Said motion seeks order authorizing the immediate reinstatement of petitioner, T.D., to North Star Academy; and, directing respondent to assess any academic curriculum and home instruction missed by T.D. during 2015 and 2016, and to provide same to T.D. in the form of supplemental tutoring and summer programs.

Respondent filed its brief in opposition to the Motion for Emergent Relief, together with Exhibits 1 through 8 and the certification of Jason Russell, Associate Chief Operating Officer, on April 20, 2016.

Because of the issues presented in the Verified Petition the matter was docketed by both the Office Special Education (as Docket No. 2016-24244E) and the Bureau of Controversies and Disputes (as Docket No. 100-4/16).

DOE requested that the OAL docket and review the matter as a special education (EDS) case and issue a final decision pursuant to N.J.A.C. 6A:14-2.7. The OAL issued a docket number of EDS 05098-16.

The Motion for Emergent Relief, while touching upon special education issues, is not a special education motion. Accordingly, the issues raised in the Verified Petition regarding special education issues will not be addressed in the within Order.

FACTUAL BACKGROUND

Petitioner, T.D., is a student at North Star Academy Charter School (North Star). She is presently in the eighth grade.

T.D. has been attending North Star since August 2012.

T.D. has a history of suspension since enrolling in North Star. An incident occurring on December 14, 2015, resulted in a ten day suspension.

The notice to T.D.'s parents regarding the suspension advised that the suspension would run through January 11, 2016. (Exhibit 1 Respondent's brief). It also advised that T.D. might receive an additional suspension, or expulsion, after a meeting of the Board of Trustees. That meeting was scheduled for January 25, 2016. That meeting was not held due to inclement weather.

The Board of Trustees did meet on February 10, 2016. At that meeting the Board determined that T.D. would continue under suspension until March 22, 2016, at which time she could return to school. The Board, by letter dated February 11, 2016, advised the parents of T.D. accordingly. (Exhibit 4 Respondent's brief). Said letter did not attach any conditions on T.D.'s return to school.

By letter dated March 22, 2016, the Board advised the parents of T.D. that her suspension would continue through May 20, 2016. The rationale stated in said letter was to evaluate T.D. for eligibility for special education in response to the parents of T.D. request. (Exhibit 8 Respondent's brief). Nothing in the documentary record indicates that the parents agreed to a continuation of T.D.'s suspension pending an evaluation for eligibility for special education, or for a clearance from a medical professional to return to school.

No notice of the meeting wherein a continuation of T.D.'s suspension occurred was provided to the parents of T.D.

Nothing contained in the March 22, 2016 letter from North Star indicates that T.D. will be returned to school upon the completion of the special education eligibility assessment. There is no date certain from T.D.'s return.

T.D. continues to be suspended to date.

During the course of T.D.'s suspension she has received appropriate education services from North Star for ten hours per week.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioners are entitled to emergent relief.

A party may only request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7:

1. Issues involving a break in the delivery of services;
2. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings;
3. Issues concerning placement pending outcome of due process proceedings; and
4. Issues involving graduation or participation in graduation ceremonies.

As the present matter concerns a disciplinary action, petitioners are entitled to seek emergent relief.

The New Jersey Supreme Court has set forth a four-prong test for determining whether an applicant is entitled to emergent relief. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:3-1.6(b)).

The four factors ("the Factors"), include:

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.

[N.J.A.C. 6A:3-1.6(b).]

The moving party bears the burden of proving each of the Crowe elements “clearly and convincingly.” Waste Mgmt of N.J. v. Union County Util. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008).

A review of the four factors is in order.

Factor One. T.D. by being continued to be suspended for an extended period of time suffers irreparable harm. See C.F. v. City of Wildwood Board of Education, 96 N.J.A.R. 2d (EDU) 619, 621 (holding indefinite placement of a student on homebound instruction demonstrated irreparable harm). See also B.K. v. Princeton Regional Board of Education, OAL DKT. No. EDS 4813-13 (April 15, 2013), where it was found on a motion for emergent relief referring to home instruction that “such an educational option is to be used by a district in limited circumstances and for a limited time period.”

Factor Two. The legal right underlying petitioner’s claim is settled.

N.J.S.A. 18A:372.4 provides that a suspended student is entitled to a hearing before the Board of Education. The continuation of T.D.’s suspension to May 20, 2016, was without notice or hearing. There was no intervening incident with T.D. of any kind. Respondent’s claim that the continued suspension was based upon the parents’ consent is simply not accurate. Nothing in the documentary record reflects this and petitioner denies it. T.D. had the legal right to a hearing and it was not provided.

Factor Four. 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 will not be granted. Here it is clear that by denying T.D. access to school, T.D. is denied access to any school activity or event, interaction with her peers and interaction with her teachers. That cannot be replaced by continued home instruction. The harm to respondent is speculative in their claim that T.D. may be a threat to other students and her teachers. This is based upon one incident where there was physical contact.

Lastly, respondent advised T.D. and her parents that she would be permitted to return to school on March 22, 2016, without conditions. That simply never happened. The unilateral decision to extend her suspension, without notice or hearing cannot be permitted to stand.

I **CONCLUDE** that the continuation of T.D.'s suspension from March 22, 2016 to May 20, 2016 was without merit and should be **REVERSED**.

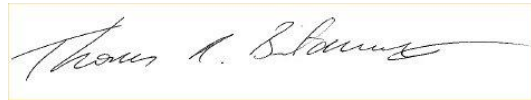
ORDER

It is hereby **ORDERED** that the continued suspension of T.D. from March 22, 2016 to May 20, 2016 is **REVERSED** and

It is further **ORDERED** that Respondent permit the immediate return of T.D. to North Star Academy.

This order on application for emergency relief may be adopted, modified or rejected by **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who/which by law is authorized to make a final decision in this matter. The final decision shall be issued without undue delay, but no later than forty-five days following the entry of this order. If (title of agency head) does not adopt, modify or reject this order within forty-five days, this recommended order shall become a final decision on the issue of emergent relief in accordance with N.J.S.A. 52:14B-10.

April 22, 2016



DATE

THOMAS R. BETANCOURT, ALJ

db

APPENDIX

List of Moving Papers

For Petitioner:

Verified Petition

Motion for Emergent Relief

Affidavit of Petitioner J.L.

Brief in support of motion

University Hospital Emergency Department after care instructions of 12/19/15

For Respondent:

Brief in response to motion

Affidavit of Jason Russell

Exhibits 1 through 8