State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

DECISION DENYING
EMERGENT RELIEF
OAL DKT. NO. EDS 7823-14
AGENCY DKT. NO. 2014 21292

V.E. AND L.B. ON BEHALF OF P.B.,
Petitioners,
v.
TOTOWA BOARD OF EDUCATION,
Respondent.

V.E. and **L.B.**, pro se, for petitioners

Nathanya Simon, Esq., for respondent (Schwartz, Simon, Edelstein and Celso, attorneys)

Record Closed: July 2, 2014 Decided: July 3, 2014

BEFORE **TIFFANY M. WILLIAMS**, ALJ:

This matter arises on an emergent basis as a result of the petitioner's request for relief in connection with the removal of P.B., an 11-year old 6th grader, from the Washington Park School in Totowa, New Jersey. On his behalf, P.B.'s mother, V.E., requested that the accusations against P.B. in connection with a Harassment, Intimidation and Bullying complaint be dismissed and that he be returned to school. The matter was transmitted to the Office of Administrative Law on June 25, 2014 where it was filed on an emergent basis. The Totowa Board of Education filed a motion to dismiss the petition for lack of sufficiency, which was denied by Administrative Law Judge Carol Cohen on June 30, 2014. A hearing was conducted on July 1, 2014. Prior

to the hearing, the Totowa Board of Education filed a pre-hearing brief stating its legal position and certifying accompanying facts.

The facts supporting this matter are undisputed and accordingly are **FOUND** as **FACT**. At the hearing, L.E. testified in furtherance of her petitioner through a Spanish interpreter. She indicated that she was not in agreement with the fact that P.B. had been removed from school. She claimed that the school's principal had advised her to come pick her son up from school and that he could not return until he had been subjected to a psychological evaluation. She was also advised that P.B. was a danger to other students and that he needed to be sent to another school. L.E. believed that P.B. had been accused of allegations with which she did not agree. L.E. had also been advised by one of P.B.'s teachers that he had a learning disability that required him to be put in smaller classes. Once P.B. was removed from the school, he received home instruction but only for approximately 2 hours per day.

In response, the Totowa Board of Education presented two witnesses. Barbara Chichele, the Supervisor of Pupil Services, testified that she was aware of prior disciplinary infractions by P.B. and had also read P.B.'s IEP. She believed that the Clifton public school system was a better fit for P.B. because of its behavioral program, which Totowa lacked. She was aware that P.B.'s existing IEP dictated that in September he was to attend Washington School, with resource center services for Language Arts. Additionally, the school's principal, John Vanderberg, testified that he was aware of P.B.'s prior disciplinary history, which was recorded in logs from school years 2012-2013 and 2013-2014. (R-2) (R-3).

Emergent relief pending settlement or decision may be requested by any party as part of the hearing request, or at any time after a hearing is requested. N.J.A.C. 1:6A-12.1(a); N.J.A.C. 6A:14-2.7(r). Emergent relief shall only be requested for issues involving 1) a break in the delivery of services, 2) disciplinary action, 3) graduation or participation in graduation ceremonies, and 4) placement pending the outcome of due process proceedings (also known as the stay-put provision). N.J.A.C. 6A:14-2.7(r).

The judge may order emergent relief if the judge determines that: (1) irreparable harm will result if the requested relief is not granted; (2) the legal right underlying the petitioner's claim is settled; (3) petitioner is likely to prevail on the merits of the underlying claim; and (4) when the interests of the parties are balanced, the petitioner will suffer greater harm then the respondent will suffer if the requested relief is not granted. N.J.A.C. 1:6A-12.1(e); N.J.A.C. 6A:14-2.7(s). See also Crowe v. DeGoia, 90 N.J. 126, 132-34 (1982).

In evaluating the petitioner's requested relief, I **CONCLUDE** that emergent relief is not warranted. As an initial matter, the petitioner's relief relates to a disciplinary removal after charges of Harassment, Intimidation and Bullying (HIB) were substantiated against P.B., as well as a decision that his actions were not a manifestation of his disability. I note that any relief related to L.E.'s disagreement with the HIB allegations and substantiations is not ripe for adjudication in this form of emergent relief because there is an entirely separate appeal process that must be followed in HIB cases.

With respect to any relief that L.E. may be seeking in the context of P.B. having been removed after a finding that his actions were not a manifestation of his disability, petitioner failed to establish that irreparable harm would ensue should the requested relief not be granted. Most particularly, the fact that school is no longer in session weighs heavily against the petitioner's argument for irreparable harm. No danger exists that educational services will cease or be interrupted because P.B. is on summer recess. Similarly, the petitioner failed to demonstrate a likelihood of success on the merits or that there is any legal basis to support her underlying claim. Moreover, balancing the equities and interests of the parties, I cannot conclude that the petitioner will suffer greater harm if the relief requested is denied. It is clear that the petitioner desires that her son return back to Washington School, but she has not satisfied the legal requirements to have that relief granted on an emergent basis.

DECISION AND ORDER

For the reasons stated above, I hereby **ORDER** that petitioners' application for emergent relief is hereby **DENIED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C.A. § 1415(i)(1)(A) 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.A. § 1415(i)(2). 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.

July 3, 2014
DATE

TIFFANY M. WILLIAMS, ALJ

Date Received at Agency ______________________________

Date Mailed to Parties: ______________________________