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ORDER

OAL DKT. NO. [EDS649-01](#)

AGENCY DKT. NO. 01-4955 E

CITY OF CAMDEN

BOARD OF EDUCATION,

Petitioner,

v.

G.K. obo N.B.,

Respondents

And

G.K. obo N.B., OAL DKT. NO. [EDS673-01](#)

Petitioners, AGENCY DKT. NO. 01-4966

(CONSOLIDATED)

v.

CITY OF CAMDEN

BOARD OF EDUCATION,

Respondent.

Carl Tanksley, Jr., Esq., for petitioner/respondent (Sumners, George & Dortch, attorneys)

Jamie Epstein, Esq., for respondents/petitioners

Record Closed: March 9, 2001 Decided: March 12, 2001—[\[Author ID1: at Thu Aug 7 13:22:00 1997 \]](#)

BEFORE **JOHN R. TASSINI**, ALJ:

STATEMENT OF THE CASE

The parties request due process and emergency relief relating to special education services to be provided for N.B., a ten year old who has been diagnosed as suffering from Attention Deficit Hyperactive Disorder (ADHD), who has been classified as multiply handicapped (MH) and who has severe behavioral problems. See U.S. Const. amend. XIV, ? 1, [20 U.S.C.A. ?1400](#) et seq., N.J. Const. art. VIII, ? IV, ? 1, N.J.A.C. 6A:14 -1 et seq.

The facts are complicated, but can be summarized. N.B. and G.K., her adoptive mother, and the City of Camden Board of Education (BOE) entered a consent order settling their previous case. The parties agreed that special education teachers from Advance, Inc., would provide special education services for N.B., consistent with her individualized education program (IEP). The Advance teachers, for reasons of personal safety, refused to provide the services in the City of Camden, so (by way of the consent order) the parties agreed that the Advance teachers would provide their services in a county public library in the Township of Voorhees, pending placement of N.B. in a public school where their services would continue. After February 12, 2001, the library refused to allow the services to continue there and, since that date, N.B. has not received the educational services required by her IEP. The BOE has not secured a location near N.B.'s home where the Advance teachers can provide the services. However, G.K., N.B.'s attorney has identified a private home in Cherry Hill Township, i.e., near but not in the City, which allegedly is appropriate and available. N.B. and G.K. request an emergency order requiring the BOE to pay for use of the residence for the Advance services, i.e., to avoid further disruption of N.B.'s education services. The BOE requests emergency orders restraining N.B. from receiving the special education services from Advance in the Cherry Hill house and requiring N.B. to accept homebound instruction. The BOE also requests an emergency order requiring N.B. to submit to an examination by a neuropsychiatrist to assist in the determination of appropriate placement of N.B.

PROCEDURAL HISTORY

On February 27, 2001, the BOE's letter and exhibit requesting emergent relief were filed with the Department of Education. [20 U.S.C.A. ?1415](#); [N.J.A.C. 6A:14-1.1 et seq.](#) The Department transmitted the matter to the Office of Administrative Law (OAL) where, on March 1, 2001, it was filed and docketed as **EDS 649-01**. [N.J.S.A. 52:14B-2\(b\)](#). On February 27, 2001, G.K.'s and N.B.'s attorney's letter requesting due process, etc., was filed with the Department of Education and the Department transmitted the matter to the Office of Administrative Law (OAL) where, on March 2, 2001, it was filed and docketed as **EDS 649-01**. The cases are consolidated and the requests for emergent relief were heard on March 9, 2001 in the OAL, Trenton (Hamilton Township).

FINDINGS OF FACT

N.B.'s Personal and Educational History,

as Reported in the BOE's Exhibits

N.B. was born on October 1, 1990. By 1992, developmental delay due to maternal drug abuse was suspected and DYFS referred N.B. to the Archway program and for evaluation. N.B.'s behavior reportedly included tearing toilet tissue, eating mattress foam, eating paint chips and drinking urine. N.B. now resides with G.K., who has adopted N.B. (along with other disadvantaged children.)

N.B. entered the Archway program and, in 1996-97, entered kindergarten. The Archway program accepted her for day placement for the 1997-98 school year. In September 1998, a male student sexually assaulted N.B.

In November 1998, the BOE convened an IEP conference. The BOE agreed to an independent psychiatric evaluation and, thereafter, the BOE assigned Laura Burke, a special education teacher, to be N.B.'s one-to-one teacher. In December 1998, at G.K.'s request, Gail Edelsohn, M.D., performed a psychological evaluation, diagnosed attention deficit disorder and post traumatic stress disorder, recommended individual psychotherapy to assist N.B. to integrate into school and the community and recommended medication.

In January 1999, consistent with N.B.'s IEP, the BOE submitted an application to Kingsway Learning Center for special services, but Kingsway rejected the application. In March 1999, the BOE convened an IEP meeting and the parties agreed to home instruction with placement in the

BOE's Cream School library and to conduct new learning disability and behavioral assessments. Marcia Berry, a Learning Disabilities Teacher-Consultant (LDTC), observed N.B. and determined that she functioned well in the school library environment. In May 1999, an IEP conference was held and the parties discussed new assessments, the IEP and placement. The parties agreed that the BOE would apply for admission of N.B. to the Bancroft and Yale schools and that the BOE would increase home instruction from 2 to 4 hours per day.

Benjamin Wolfson, M.D., the BOE's psychiatrist, reviewed Dr. Edelson's report and determined that the Cooper Medical Center should provide therapeutic services in an interdisciplinary and cooperative relationship with the BOE.

The Yale and Bancroft schools did not accept N.B.

In June 1999, at G.K.'s request, Jodi Brown, M.D., a psychiatrist began to treat N.B. and the BOE filed a due process request. The case was docketed as EDS43-09 and a hearing began. The parties entered into a partial settlement agreement whereby the BOE would pay for past and continued treatment by Dr. Brown and for transportation for such treatment. The hearing continued on other issues. On July 30, 1999, the Honorable Anthony Bruno, A.L.J., concluded that the BOE's educational evaluation of N.B. was inappropriate, he ordered independent evaluations, and he ordered that the BOE provide an extended school year (ESY) program for N.B.

The parties agreed that, for the 1999-2000 school year, N.B. would be enrolled in a regular education classroom at the BOE's Cream Elementary School. The BOE assigned Ms. Burke to be N.B.'s one-to-one teacher. In September 1999, Dr. Brown recommended counseling for G.K. and N.B. and the BOE agreed to provide transportation for this purpose. In September 1999 also, Gracie Lewis, N.B.'s case manager, requested that G.K. attend an IEP conference and she submitted a draft IEP.

N.B. allegedly threw a chair at another student and ran about in a classroom, cursing and, on October 13, 1999, she received a 5-day suspension. On October 20, 1999, the parties agreed to an updated IEP that provided for a regular education setting, continued the one-to-one teacher, etc. The BMP was revised to include techniques for behavioral development. Ms. Burke withdrew and Debelvia Peterson was assigned as N.B.'s one-to-one teacher and was given primary responsibility for implementation of N.B.'s BMP.

The BOE alleges that N.B. continued to engage in disruptive behavior. On October 29, 1999, Joseph A. Fiore, the BOE's psychologist observed J.B. in the regular educational setting and, thereafter, Mr. Fiore, Ms. Lewis and Ms. Wyatt, the school principal, submitted a modified BMP which, by way of a token reinforcement system, attempted to improve N.B.'s behavior.

On November 22, 1999, Edna Barenbaum, Ph.D., N.B.'s independent consultant, submitted to the BOE an educational/psychological evaluation. In Dr. Barenbaum's evaluation, she wrote that N.B. functioned at average intellectual level, but with significant delays in reading, writing and oral language and she diagnosed N.B. as suffering from ADHD. Dr. Barenbaum recommended that N.B. be placed in a regular classroom with support for all academic areas and recommended that the BOE assign to N.B. a support specialist highly trained and experienced in reading and adjusting curriculum to meet N.B.'s needs.

On December 12, 1999, Ms. Peterson received in-service training in the modifications of N.B.'s BMP as recommended by Dr. Barenbaum and she then began to implement them.

On December 16, 1999, Carolyn Hamlet, PH.D., an independent consultant retained for N.B., who had observed J.B., submitted to the BOE a functional behavioral assessment wherein she provided behavioral objectives and made recommendations, including a token reinforcement system.

On December 20, 1999, the BOE convened an IEP review conference and the BOE agreed to implement Dr. Hamlet's recommendations and to extensively modify N.B.'s BMP and, on December 22, 1999, the IEP and BMP were revised accordingly.

On February 11, 2000, Dr. Hamlet recommended that the BOE hire Kyra Donnegan, a behavioral consultant, and the BOE agreed to do so.

On February 17, 2000, the BOE convened an IEP meeting, but (the BOE alleges) N.B.'s representatives did not attend that meeting. On June 5, 2000, the parties met to revise N.B.'s IEP for the 2000-01 school year. The parties agreed that N.B. would attend the BOE's ESY. Due to N.B.'s behavior in the regular education setting and her levels of performance, the BOE recommended a change in placement from the regular classroom to a program for students with multiple disabilities, but G.K. objected to such placement.

In July and August 2000, N.B. attended the BOE's ESY program.

On August 23, 2000, the parties met in an IEP conference and G.K. requested placement other than in a public school. The BOE agreed to this placement and provided N.B.'s instruction in the Camden City YMCA, using Ms. Donnegan as a one-to-one teacher.

N.B.'s behavioral difficulties continued: On October 16, 2000, N.B. entered a school bus, jumped into the driver's seat, ran through the bus, opened an emergency door, ran from the bus and ran around the YMCA grounds. On October 17, 2000, N.B., without permission, left the YMCA and, upon her return, threw a pair of scissors at a teacher, kicked and hit teachers, turned over tables, and threw other objects in a classroom. G.K. was unavailable to come to help N.B. and Our Lady of Lourdes Hospital professionals transported N.B. to that facility.

On October 18, 2000, N.B., through her attorney, notified the BOE that N.B. would refrain from attending class for a period and, on October 19, 2000, the BOE offered home instruction or placement in a public school where security and medical attention could be provided, pending resolution of issues relative to placement. N.B. rejected this offer.

On October 23, 2000, an IEP conference was held. N.B.'s attorney proposed that Advance provide educational services for N.B. and the BOE agreed to consider the proposal and to provide a site for such services. On November 15, 2000, the BOE again offered home instruction, etc., pending confirmation that Advance possessed the requisite certifications, etc., to provide educational services to N.B. N.B. again rejected the offer. On November 22, 2000, BOE and Advance personnel met and toured a site in the City of Camden where the BOE proposed for Advance to provide its services. However, members of the City of Camden and the Advance personnel became involved in an altercation with a member of the community of the City of Camden and, thereafter, for reasons of personal safety, they refused to provide their services in the City of Camden. In November and December 2000, the parties communicated relative to Advance's certifications, etc.

The parties requested due process and the cases were transmitted to the OAL and docketed as EDS 211-01 and EDS 244-01. The BOE received confirmation that Advance had the requisite certifications, etc., and, on February 5, 2001, by way of a consent order, the parties settled the case. The consent order, incorporated in an OAL decision, stated:

Advance, Inc., shall provide instructional and supplemental services (including speech therapy) to N.B. at the Camden County Library at Voorhees, NJ, pending the location of an appropriate inclusive placement in a nearby public school. In the event of the

location of an appropriate inclusive placement in a nearby public school, Advance, Inc., shall provide all supplemental services at said setting.

On February 12, 2001, in the Camden County Library's Voorhees branch, the Advance teachers provided educational services to N.B. in a small room. However, Claudia B. Sumler, Director of the library, alleged that N.B. damaged the room, etc., and wrote that she did not and would not authorize use of the room for this purpose. BOE-3, BOE-4.

The BOE has offered homebound instruction to N.B. and has offered a location in Camden for provision of educational services for N.B. However, as written above, the parties' consent order provides that the Advance teachers will not provide their services in Camden. BOE-3, BOE-4. The BOE's attorney represented that the BOE has contacted public school officials et al., in an attempt to find a site for N.B. and the Advance teachers, and that the Winslow Township public school system will make a room available. However, this site is about 40 minutes from N.B.'s home.

N.B.'s Representations

Relative to a Location for Continuation of Educational Services

N.B.'s attorney has represented that Advance has searched for an appropriate site for instruction of N.B. and represented further that a single-family house at 14 Merle Lane, Cherry Hill, is available for rental for Advance's instruction of N.B.; the house is clean with a fenced yard; the house is in a safe neighborhood; and the house is near N.B.'s home, a library and Kennedy Hospital, etc.

N.B.'s attorney represents that, Carl Warech has advised him that he is the executor of the estate that owns the house, the house is unoccupied and that it could be rented for instruction of N.B. at \$500 per month.

CONCLUSIONS OF LAW

Under laws, including the Individuals with Disabilities Education Act (IDEA), a public school board of education is required to provide classified students with a FAPE, including special education services. See U.S. Const. amend. XIV, ? 1; [20 U.S.C.A. ?1400](#) et seq.; N.J. Const. art. VIII, ? IV, ? 1; [N.J.S.A. 18A:46-1](#) et seq.; N.J.A.C. 6A:14 -1 et seq.

The term special education means specially designed instruction, at no cost to parents or

guardians, to meet the unique needs of a child with a disability, including . . . (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. [20 U.S.C.A. ?1401\(a\)\(16\)](#).

In special education cases, emergency relief is available subject to the following factors: 1. the person requesting the emergency relief will suffer irreparable harm if the relief is not granted; 2. the legal right of the person requesting the emergency relief is settled; 3. it is probable that the person requesting the emergency relief will prevail on the merits of the underlying claim; and 4. balancing the equities and interests of the parties, if the emergency relief is not granted, the person requesting the emergency relief will suffer greater harm. [N.J.A.C. 1:6A-12.1\(e\)](#). See also [N.J.A.C. 1:1-12.6](#).

N.B. suffers from significant disadvantages and disabilities. She is classified and has a right to a FAPE, including special education services, consistent with her IEP, and the BOE has a duty to provide her with that FAPE, etc. Settlement agreements are favored in the law as an efficient means of resolving cases and they are enforceable contracts. The parties settled their previous case by way of the consent order, which provides that the Advance teachers will provide services to N.B. at a location near but outside of the City of Camden. That site is no longer available and, for about a month, for lack of another appropriate site, N.B.'s education has been disrupted. This constitutes irreparable harm to N.B. The BOE's duties include securing an appropriate site for the Advance teachers to provide N.B. with special education services. The Winslow Township school is 40 minutes away from N.B.'s home, i.e., the BOE has failed this duty. The BOE may not merely, e.g., wait until Advance secures an appropriate site. Balancing the equities and the interest in enforcement of the parties' settlement agreement, the BOE must be ordered to provide N.B. with a FAPE, consistent with her IEP, by way of Advance at a site outside of but nearby the City of Camden, either in the Cherry Hill house or at some other appropriate site. [N.J.A.C. 6A:14-3.7\(a\)4](#). Further, I see no basis in the record to order N.B., who has previously submitted to a neuropsychiatric examination to submit to another such examination, although given N.B.'s history, such an examination may well be helpful.

ORDERS

(1) I **GRANT** N.B.'s and G.K.'s request and I **ORDER** the BOE by way of Advance, Inc., to immediately provide N.B. with a FAPE, consistent with her IEP, at a site outside of but nearby the

City of Camden, either in the Cherry Hill house or at some other appropriate site, including a nearby public school. (2) I **DENY** the BOE's request for an emergency order restraining N.B. from receiving special education services from Advance in the Cherry Hill house. (3) I **DENY** the BOE's request for an emergency order requiring N.B. and G.K. to accept homebound instruction. (4) I **DENY** the BOE's request for an emergency order requiring N.B. to submit to a neuropsychiatric examination, at this time.

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.

This order on application for emergency relief is final pursuant to [20 U.S.C.A. ?1415\(i\)\(1\)\(A\)](#) and [34 CFR 300.510](#) (1999) and is appealable by filing a complaint and bringing a civil action either in the Superior Court of New Jersey or in a district court of the United States. [20 U.S.C.A. ?1415\(i\)\(2\)](#), [34 CFR 300.512](#) (1999). If either party feels that this order is not being fully implemented, this concern should be communicated in writing to the Director, Office of Special Education Programs.

DATE **JOHN R. TASSINI, ALJ**

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OAL DKT. NOs. EDS 649-01 & EDS 673-01

10

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