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summary

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ALJ Grants Parents' Request to Halt High School Graduation and Orders Board to Provide Compensatory Education

J.T. and C.T., on Behalf of T.T., Petitioners, v. West Windsor-Plainsboro Regional Board of Education, Respondent, EDS No. 4728-06 (April 30, 2007) [Decided by Joseph F. Martone, ALJ].

J.T.'s and C.T.'s daughter, T.T., was born on August 26, 1988. In September 1990, she was referred to Project Child for global delays. In 1996, she was diagnosed with "selective mutism" by a psychiatrist.

In 2004, T.T. attended Lawrence High School (LHS). While at LHS, the school psychologist expressed concern at T.T.'s high level of depression and T.T.'s cutting her arm with a razor blade. The school psychologist recommended that she receive professional help.

T.T.'s family then moved to the West Windsor-Plainsboro school district (WWP). As a result of additional evaluations, T.T. was admitted to the Adolescent Partial Hospital Program at the University of Medicine and Dentistry of New Jersey (UMDNJ) which in turn recommended that she be placed in a therapeutic school rather than a regular public high school.

On September 29, 2004, WWP's CST prepared an IEP stating that T.T.'s current placement was the "hospital." The IEP recommended an out-of-district placement with an ESY. There was no entry under the heading "Statement of Transition Service-Needs." T.T. was diagnosed with depression, an eating disorder and oppositional defiant disorder.

T.T. then attended the Adolescent Therapeutic Day School at UMDNJ until January 2005. T.T. was then referred for 24-hour care and supervision. On February 4, 2005, she was

accepted at the East Mountain School Program (EMSP), a residential program at the Carrier Clinic. EMSP consisted of an academic component at the East Mountain Day School (EMDS) and a residential component at East Mountain Youth Lodge (EMYL). On February 15, 2005, a new IEP was prepared for the placement at EMSP.

On May 12, 2006, WWP's CST determined that T.T. was eligible to graduate in June 2006 from EMDS. Subsequently, on May 31, 2006, T.T.'s parents filed a due process petition seeking an order to prevent T.T. from graduating. The petition sought compensatory education and the provision of transition services for the two-year period that WWP failed to provide a FAPE. T.T.'s parents also sought emergent relief for T.T.'s stay-put placement to which the board subsequently agreed.

T.T.'s parents contended that WWP failed to provide a FAPE because: (1) T.T. was absent most of her junior year for two hospitalizations, and only received about two hours of tutoring per week; (2) T.T. was absent for 55 days during her senior year without IEP accommodations for those absences; (3) the CST failed to offer T.T. grade-level work with accommodations and the IEP had no criteria to evaluate progress toward IEP goals; and (4) the IEP failed to include counseling and transition services.

In order to prove these contentions, T.T.'s parents called five witnesses at the hearing before the ALJ. Their first witness was Jennifer LeSage, a residential therapist and psychologist at EMYL. LeSage was T.T.'s therapist for the 2005-06 school year. LeSage testified that T.T. received 30 minutes of individual counseling, once per week, and 60 minutes of group counseling twice per week. LeSage provided therapy to help her deal with depression, suicidal tendencies, and self-injurious behavior. T.T. was hospitalized for at least 10, 10-day periods during the past year. She testified that

WWP did not provide T.T. with bedside instruction during those hospitalizations.

LeSage testified that T.T.'s disability impairs all areas of her functioning and that she cannot transition to work or college because of her instability. On May 12, 2006 she met with WWP's CST. At the meeting, they discussed T.T.'s graduation. The case manager indicated that T.T. met the graduation requirements, and advocated for her graduation. There were discussions about the Division of Vocational Rehabilitation (DVR), but there was no formal plan and no outside agencies invited.

LeSage testified that T.T. is not ready to leave EMYL, and that she needed vocational training and an academic program in order to be successful. LeSage testified that T.T. did not attend the graduation ceremony because she was hospitalized with suicidal ideation. T.T. has been in crisis because of her concern about her future after she graduates. LeSage testified that T.T. was not emotionally ready to graduate, and had not met any of the goals in her treatment plan.

The next witness was Philip Haramia, the director and principal of EMDS. He testified that, during the 2005-06 school year, T.T. had 5 regular absences and 63 absences due to hospitalizations. WWP's CST is regularly advised of these absences. He did not know the number of absences for the 2004-05 school year. He testified that tutoring was provided to T.T., but there was no documentation to show that it was provided. He testified that it was WWP's responsibility to provide tutoring. He did not receive any notice from WWP whether T.T.'s absences would affect her graduation, even though state policy indicates that the maximum number of absences is 18 days.

Haramia testified that T.T. took the HSPT during the 2004-05 school year but scored below proficient. T.T. did not take the SAT during the 2005-06 school year because she was hospitalized each time.

He indicated that the IEP called for an ESY, but because T.T. was hospitalized, she did not attend. In its place, she was to be provided with home instruction.

He testified that T.T.'s parent consented to the implementation of the IEP for September 20, 2005 through June 30, 2006, and that it indicates that WWP's standards are to be applied for graduation purposes. In fact, a diploma was issued for T.T. and he was in possession of it.

The third witness was Kristen R. Prete who is a case manager, social worker and counselor at the Carrier Clinic. Prete notified WWP of T.T.'s frequent hospitalizations. Prete believes that T.T. completed all of her 11th grade classes except U.S. History.

Prete counseled T.T., and found that T.T. made many threats of self-harm and actually inflicted harm to herself. She believed that T.T. was still suffering from serious psychiatric and developmental issues because of T.T.'s behavior.

Prete testified that she communicated to the CST her concern that T.T. was not ready for adult life. Prete met with other professional therapists on April 6, 2006 regarding T.T. All agreed that she needed work experience, and that her chances of getting a part-time job would improve if she had a diploma. The IEP did not discuss transition options, and the IEP was not modified to include vocational training. She testified that she discussed graduation with T.T. and T.T. was fearful of it.

Prete testified that, when the CST met on May 12, 2006, it was decided that T.T. would graduate and pursue vocational services through DVR. Prete did not express an opinion at the meeting as to T.T.'s readiness to graduate, but was told by the CST that T.T.'s education would not be extended another year. Prete believed, however, that T.T. should remain in the program to deal with her social and emotional needs.

Barbara Mosley was the fourth witness. Mosley is employed at EMDS as a guidance and transition counselor. Mosley testified that, in order to deal with T.T.'s selective mutism, the goal was to have T.T. participate in class. She believed that T.T. needed a therapeutic environment for her disabilities. T.T.'s IEP dated June 22, 2005 did not contain any goals or objectives. It was WWP's responsibility to set forth the goals. T.T.'s many absences during the 2005-06 school year impacted on T.T.'s progress, and Prete mentioned this in her report. WWP was notified of T.T.'s absences in excess of five days.

Mosley also testified that in May 2006, T.T. was concerned about her impending graduation. Mosley testified that she worked with the CST for the provision of transition services, but that T.T. could not take advantage of the transition plan because of her frequent hospitalizations. T.T.'s plan was based on her being college-bound, but T.T. was not academically or socially ready for college. Transition services were not included in the IEP. DVR was discussed at the September 2005 and May 2006 IEP meetings. However, DVR does not speak to the child until her senior year and does not become involved until the child graduates.

The final witness was Dr. Diane Lantz-Hecker, a school psychologist employed by WWP. Beginning in November 2004, Dr. Lantz-Hecker became T.T.'s case manager. At that time, she reviewed T.T.'s IEP and went to UMDNJ to see her and speak with her mother. The placement at UMDNJ was terminated and T.T. was placed at EMYL. The placement was made by DYFS. On February 15, 2005, an IEP meeting was held and T.T.'s mother participated by telephone. The IEP that was prepared noted that T.T.'s work product is impacted by her emotional situation, and that a behavior intervention plan was not needed as they would be able to work with the school's behavior modification plan.

T.T. had 63 absences during the 2004-05 school year and she was required to make up the work she missed except for three chapters in U.S. History. During the summer of 2005, T.T. was on home instruction for the ESY.

Dr. Lantz-Hecker testified that on May 12, 2006, T.T.'s parents attended a Student Summary of Performance (SSOP) meeting to review T.T.'s progress and determine whether she met the requirements for graduation. At that time, T.T.'s mother was in agreement that T.T. should graduate. A few days later T.T.'s mother said she did not want her to graduate, and also communicated that in writing. Her letter indicated that she disagreed with the IEP, and felt that T.T.'s transitional goals of social and emotional development had not been met. She requested that T.T.'s graduation be put on hold until these issues were addressed. Dr. Lantz-Hecker wrote back and advised that, at the meeting on May 12, there was agreement by all parties that T.T. should graduate and post-high school opportunities were under review. Since T.T. had met all academic requirements for graduation, there was no reason to address T.T.'s academic achievement further.

Dr. Lantz-Hecker testified that accommodations were made to deal with T.T.'s extensive absences. After ten days of absences, WWP provided home instruction, and therapists at the hospital provided counseling. Dr. Lantz-Hecker testified that T.T. reached academic proficiency in 2005 based on her course work, and that no SRA or HSPT was given or necessary to be given to her.

The ALJ hearing the matter posited the following issues: (1) whether the IEP was defective because it failed to provide accommodations for T.T.'s anticipated chronic absences during her senior year; (2) whether the IEPs were defective because they did not offer grade-level work with accommodations, and provided no objective criteria to evaluate progress toward IEP goals; (3) whether the CST

failed to take appropriate action to ensure that learning occurred; and (4) whether the IEPs were not completed prior to graduation because transition counseling and transition services were not provided by the CST or any other agency.

The ALJ explained that *N.J.A.C.* 6A:14-3.7(d) requires a student's IEP to contain the following: (1) a statement of the student's present levels of educational performance including a statement as to how his/her disability affects his/her progress in the general curriculum; (2) a statement of measurable annual goals related to the Core Curriculum Content Standards; and (3) a statement of the special education, related services and supplementary aids and services to be provided to the student to help him/her achieve his/her goals.

In this case, WWP was aware of T.T.'s self-injurious behavior which required extended hospitalizations. Despite this knowledge, T.T.'s IEP made no provision for any supplementary services such as special tutoring, so as to avoid interrupting her educational program. Therefore, the IEP was defective by failing to deal with T.T.'s disabling condition which resulted in frequent, extended hospitalizations.

The ALJ also found that T.T.'s IEPs were defective because they did not offer grade-level work with accommodations, and did not provide objective criteria to evaluate T.T.'s progress toward IEP goals. The ALJ commented that T.T.'s IEP dated September 30, 2005 was "nothing more than a confusing collection of documents" which contained blank spaces and unexplained information.

With regard to transition counseling and services, the ALJ explained that *N.J.A.C.* 6A:14-3.7(d) requires a district to include a statement of transition services in an IEP beginning when the student is age 14. Beginning at age 16, the IEP must contain a statement of transition services including, when appropriate, statements of inter-agency respon-

sibilities. The ALJ commented that one of the purposes of the IDEIA is to prepare disabled students for further education, employment and independent living.

In this case, T.T.'s IEPs are practically devoid of information regarding transition services. The IEPs provide no details concerning transition services and do not identify the persons responsible to serve as a transition liaison. Furthermore, there was no focus on self-sufficiency or independent living. Based on the testimony and evidence presented, the ALJ found that it was not until the SSOP meeting in May 2006 that transition services were discussed. Therefore, the ALJ concluded that the IEPs failed to comply with the IDEIA.

With regard to whether the CST took appropriate action for T.T. to graduate, the ALJ explained the regulatory requirements under *N.J.A.C.* 6A:14-3.7, -4.11 and -4.12. The ALJ indicated that T.T.'s IEPs provided that WWP's standards apply to attendance, credit hour requirements, HSPA, and Core Curriculum Content Standards. However, T.T. was exempted from the HSPA due to anxiety, and curriculum mastery would replace HSPA mastery. The ALJ commented that he had "serious reservations as to how a student who is absent for 68 days out of a total of 180 days . . . would be able to complete all of the required academic work to graduate." The only testimony that T.T. successfully completed all of her academic requirements came from Dr. Lantz-Hecker, who also provided a copy of T.T.'s official transcript. While T.T.'s transcript shows she completed all her courses, the ALJ noted that there was no testimony or report from T.T.'s teachers to establish that she successfully completed all of her academic work.

Based on the foregoing, the ALJ granted the petition and ordered T.T.'s graduation in June 2006 to be set aside. The ALJ also ordered WWP to provide T.T. with 17 months of compensatory education representing the period between February 2005 and June 2006.

Parent Entitled to Select Examiner for Independent Evaluation and Board Is Responsible for Paying Cost of the Evaluation

Wall Township Board of Education, Petitioner, v. C.M., on Behalf of D.M., Respondent, EDS No. 6450-06 (May 9, 2007) [Decided by Ana C. Viscomi, ALJ].

D.M. is a third-grade student who is not classified and who attends school in the district. During the 2005-06 school year, D.M.'s mother, C.M., obtained private evaluations of her son. Based upon these evaluations, C.M. required that the CST evaluate him to determine whether he was eligible for special education and related services. The CST then assessed D.M. in learning and speech/language. As a result, the CST determined that D.M. was not eligible for special education.

On February 21, 2006, C.M. requested the district pay for independent learning and speech/language evaluations. On February 27, 2007, the district agreed to provide the independent evaluations, but did not provide C.M. with any written or verbal criteria regarding the selection of evaluators.

On March 14, 2006, C.M. informed the district that she selected Dr. Carol Aitchison, LDTC to conduct the learning evaluation, and Kathleen Scaler-Scott from Princeton Speech-Language & Learning Center, to conduct the speech/language evaluation. She advised that the district should contact them and arrange for payment.

C.M. did not hear back from the district. On May 1, 2006, she wrote to the district and advised that she wanted to substitute Dr. Edna Barenbaum for Dr. Aitchison since Dr. Aitchison was no longer available. C.M. also filed a complaint with the Office of Special Education Programs that same day.

On May 3, 2006, the district informed C.M. of four providers who could conduct the independent learning evaluations. C.M. then investigated the providers and contacted the district's director of special services regarding the inquiries she made. The director of special services then advised that she would send a list of evaluators approved by the New Jersey Department of Education.

On May 10, 2006, the district forwarded C.M. an email link to the NJDOE website. The district advised that it objected to both Dr. Barenbaum and Scaler-Scott. C.M. then offered the names of two other individuals.

On May 18, 2006, the district filed a due process petition (followed by two successive petitions) seeking a determination that C.M. was only entitled to independent speech/language and learning evaluations if the cost of the evaluations was limited to the "customary" fee charged in the region and if the selected evaluators were "qualified" and "independent." The district maintained that C.M. did not have the legal authority to select the evaluators, and that it had the sole right to do so.

Citing 34 *C.F.R.* §502, the ALJ explained that an "independent evaluation" is an evaluation conducted by a qualified examiner who is not employed by the school district, and that parents have the right to request an independent evaluation subject to certain conditions. According to 34 *C.F.R.* §502(b)(2), if a parent requests an independent evaluation, the school district must ensure that the evaluation is provided at public expense, unless the district demonstrates that the evaluation obtained by the parent did not meet agency criteria. An interpretive letter dated February 20, 2004 from the U.S. Department of Education, OSEP to the California Department of Education advised that "in order to ensure the parent's right to an independent evaluation, it is the parent, not the district, who has the right to choose which evaluator of the list will conduct the [independ-

dent evaluation].” Nevertheless, a school district must set criteria under which the evaluation can be obtained at public expense, including the location of the evaluation, and the qualifications of the examiner.

In this case, the district first filed its petition on May 18, 2006 which was almost 3 months after C.M. requested the independent evaluations. Pursuant to *N.J.A.C.* 6A:14-2.5(c), the district was required to file a due process petition within 20 calendar days after receipt of the request, and cannot delay the provision of the evaluation or the initiation of a due process hearing.

The ALJ found that the district did not have a prepared list of evaluators that met agency criteria. C.M. should have been provided that list on February 27, 2006, the date on which the district agreed to provide the independent evaluations. Rather, the district waited until after she filed the OSEP complaint and well beyond the 20-day deadline under the regulations.

The ALJ stated that a district can impose reasonable cost criteria, but the district should have provided that criteria at the outset. The district’s director of special services provided a certification indicating that the prevailing average rate for an independent learning evaluation is \$550.00.

Based on the foregoing, the ALJ determined that the district is required to provide the educational evaluation immediately. The ALJ permitted C.M. to choose the evaluator and the district is to bear the cost of same.

Board Not Required to Provide Independent Evaluation Where Evidence Demonstrates That the Re-evaluation of the Student Was Done Properly

Washington Township Board of Education, Petitioner, v. J.T. and L.T., on Behalf of

M.T., Respondents, EDS No. 677-07 (May 14, 2007) [Decided by Patricia M. Kerins, ALJ].

M.T. currently attends school in the district and is in the seventh grade. Back in 2003, when M.T. was in the fourth grade, she was evaluated by the CST, and was subsequently classified as having a specific learning disability in basic reading, with a severe discrepancy between her intellectual ability and academic achievement. M.T.’s IEP included in-class support for all academic subjects, except for certain classes.

On October 13, 2006, an evaluation plan conference was held which M.T.’s parents, J.T. and L.T. attended. The purpose of the conference was to discuss M.T.’s continued eligibility for special education and related services. Subsequently, in December 2006, M.T. was re-evaluated by the CST. M.T. was administered the Woodcock-Johnson III Achievement Test. She received a broad reading score of 102, and a broad written language score of 108 placing her within the average range. She scored in the 50th percentile on the Gray Oral Reading Test-4, placing her in the average range. She also placed in the average range for the Test of Written Language 3. With respect to psychological testing, M.T.’s scores on the Wechsler Intelligence Scale for Children–Fourth Edition fell in the average to superior range, and her scores on the Piers-Harris Children’s Self-Concept Scale were at or above age level.

On January 19, 2007, an eligibility conference was held, and it was determined that M.T. was no longer eligible for special education and related services. On January 24, 2007, M.T.’s parents advised the board that they were seeking an independent evaluation. The board then filed a due process petition alleging that it was not required to provide an independent evaluation.

The ALJ hearing the matter explained that, pursuant to *N.J.A.C. 6A:14-2.5(c)*, a parent may request an independent evaluation if there is a disagreement with the district's evaluation. The district may ask the parent to explain their objections, but the parent is not required to provide an explanation. The district must provide the evaluation without undue delay unless it files a due process hearing within 20 days of receiving the parental request for the evaluation.

In this case, the board presented evidence that the evaluations it performed on M.T. were valid and addressed the requirements set forth in the relevant regulations. Therefore, the board has proven that it is not required to provide an independent evaluation of M.T.

Emergent Relief Denied to Emotionally Disturbed Student Who Was Barred from Attending the Senior Prom and Graduation Ceremony

T.S., Petitioner, v. Jackson Township Board of Education, Respondent, EDS No. 4113-07 (May 25, 2007) [Decided by Stephanie M. Wauters, ALJ].

T.S. is an eighteen-year-old high school student and is classified as emotionally disturbed. T.S. is set to graduate and receive his diploma on June 15, 2007. However, T.S. was barred from attending his senior prom and graduation exercises as a result of multiple disciplinary infractions. Therefore, on May 17, 2007, he filed a request for emergent relief to obtain an order permitting him to participate in both events.

At the emergent relief hearing, evidence was presented that T.S. has had behavioral problems throughout high school. Starting in his freshman year at Jackson Memorial High School (JMHS), teachers reported that his behavior was disruptive, and T.S. had a number of suspensions for fighting and making anti-

Semitic remarks. As a result, T.S. was placed on home instruction, and was subsequently placed at the Coastal Learning Center (Coastal).

While at Coastal, T.S. continued to be suspended for various incidents including a fight, making anti-Semitic remarks, and burning a student's sweatshirt. During his sophomore year at Coastal, T.S. was dismissed for multiple infractions of school rules and placed on home instruction.

In his junior year, as a result of a burglary offense, T.S. was placed in the Ocean County Juvenile Detention Center. He was then transferred to the Southern Residential Community Home (SRCH). T.S. was discharged from SRCH and was then placed at Meridian Academy.

In September 2006, T.S. initially returned to JMHS for his senior year. He attended two mainstream classes, and had work study for the remainder of the day. During his senior year, T.S. had a number of disciplinary infractions. First, he was recklessly driving in the faculty parking lot and almost hit a security guard. Then, on numerous occasions, he was disciplined for failing to take off his hat, refusing to give his name, and using his cell phone in the cafeteria.

In February 2007, he brought a "work knife" to school. The police were contacted, and when they came, T.S. banged his head against a wall and resisted arrest. T.S. was given a ten-day out-of-school suspension, a 90-day conduct probation, and was directed not to come onto school grounds. T.S.'s IEP dated April 27, 2007 did not exempt him from compliance with the student discipline code.

Following his arrest and suspension, T.S. was placed in the Enhancement Technology Program (ETP) in Lakehurst to complete his senior year. Despite the directive not to come onto school property, T.S. came to school to pick up his girlfriend, and a security guard

noticed a knife in his front shirt pocket. As a result, T.S.'s conduct probation was extended to the end of the school year.

In accordance with the student handbook, students placed on conduct probation "will not be permitted to practice or participate in any sport, attend any social event . . . [including] such things as proms, senior farewell, and . . . graduation." Board policy also provides that social events are not part of a thorough and efficient system of education, and participation in them is not a right and may be summarily denied.

At the hearing, the principal of JMHS testified that, based on T.S.'s past behavioral history, he had serious concerns about the safety of those attending the prom and graduation. The supervisor of special education testified that T.S. had a lack of self-control and disrespect for authority, and was not confident that he had been rehabilitated so that he could be trusted at social events.

T.S. testified that he committed most of the infractions, but took exception to some. He testified that he has been working hard in his work study program and holds two jobs. He testified that he purchased prom tickets, put a deposit on a tuxedo, that his girlfriend had purchased a new dress, and that he would behave himself. He also produced a letter from a counselor at ETP to demonstrate that his behavior had improved.

The ALJ determined that T.S. failed to meet the criteria under *N.J.A.C.* 6A:14-2.7(m) and *N.J.A.C.* 1:6A-12.1(e). The ALJ explained that, while it means a great deal for T.S. to attend his prom and graduation, he cannot be trusted to attend the events due to his disciplinary history. The ALJ concluded that T.S. will not suffer irreparable harm if he is not permitted to participate. She also concluded that T.S. does not possess a well-settled right to participate in those events. On the contrary, participation in such events is not an absolute right and the

determination of whether a student can attend is within the discretion of the board. The ALJ also determined that T.S. does not have a substantial likelihood of success on the merits because boards are charged with protecting the safety and welfare of their students and school community. Lastly, while T.S. has a substantial interest in attending the prom and graduation, the board also has a substantial interest in insuring that its disciplinary policies are carried out to protect the safety of students and other attendees at these events. Based on the foregoing, the ALJ denied T.S.'s petition for emergent relief.

Parents Cannot Force School District, Which Is Not Responsible for Educating Their Child, to Accept the Child into its Special Education Program

M.K. and L.K., on Behalf of J.K., Petitioner, v. Montclair Board of Education and Mountain Lakes Board of Education, Respondents, EDS No. 05502-07 (June 8, 2007) [Decided by Caridad F. Rigo, ALJ].

J.K. is three years old and resides with his parents, M.K. and L.K. in Montclair. J.K. has been diagnosed with chronic lung disease, pharyngeolaryngomalacia, bilateral hearing loss, and has gross and fine motor delays. Pharyngeolaryngomalacia is a decreased tone of the tissue of the larynx and pharynx which requires that J.K. be fed through a gastrostomy tube. At times when J.K. becomes agitated, he can experience involuntary, intermittent breath holding episodes.

In April 2007, the Montclair Board of Education determined that J.K. was eligible for special education and related services. J.K.'s IEP recommended that she be placed out-of-district at the Lake Drive School in Mountain Lakes.

From March 2005 through May 2007, the Lake Drive School provided an early intervention program for J.K., in which she received home-based educational therapies; J.K. did not attend the school as a student.

On May 2, 2007, an intake meeting was held at the Lake Drive School. It was then determined that the school could not meet J.K.'s needs because of her possible involuntary breath holding episodes. The school nurse was concerned that she could not care for J.K. in such an event and that it could become a crisis. Subsequently, on May 11, 2007, the Mountain Lakes Board of Education declined to accept J.K. at the Lake Drive School. Thereafter, J.K.'s parents filed a request for emergent relief to request that the Mountain Lakes Board of Education be ordered to accept J.K. into the Lake Drive School.

The ALJ explained that, pursuant to *N.J.A.C. 6A:14-2.7(s)*, in order to be successful, the petitioners have to prove: (i) that they will suffer irreparable harm if the relief is not granted; (ii) the legal right underlying their claim is settled; (iii) they are likely to prevail on the merits of the underlying claim; and (iv) in balancing the parties' interests, the equities weigh in favor of the petitioners. The ALJ found that the petitioners failed to satisfy these requirements.

First, the petitioners have not provided any legal or factual support to demonstrate that J.K.

will suffer irreparable harm if she is not admitted to the Lake Drive School. The Montclair Board of Education, which is responsible for educating J.K., has provided all required services at home while seeking an appropriate placement.

Second, the legal right underlying the claim does not support the petitioners. The ALJ commented that the Mountain Lakes Board of Education is not responsible for educating J.K., and the petitioners have not cited any law requiring it to admit students from outside of the district. Moreover, to the extent that the IDEA's "stay put" provision applies, J.K.'s operative placement involved the provision of at-home services, and not attendance at the Lake Drive School.

Third, the petitioners have failed to demonstrate that they are likely to succeed on the merits of the underlying claim. Despite the fact that the Mountain Lakes Board of Education accepts federal funds, it has the discretion to decide which out-of-district students to admit.

Lastly, the Lake Drive School does not have the resources to accommodate J.K.'s emergency medical needs. J.K.'s interest in maintaining her health could be placed at risk. Therefore, the balancing of the equities favors the Mountain Lakes Board of Education. Based on the foregoing, the ALJ denied the request for emergent relief and ordered the petition dismissed.

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