



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**FINAL DECISION ON**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 04744-21

AGENCY DKT. NO. 2021- 32881

**Z.H.**

Petitioner,

v.

**CINNAMINSON TOWNSHIP  
BOARD OF EDUCATION AND  
Y.A.L.E SCHOOL, INC.,**

Respondents.

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**Ronald DeSimone** Esq., on behalf of Z.H., (Law Offices of Ronald DeSimone, P.C. attorneys)

**Alyssa K. Weinstein**, Esq., for respondent, Cinnaminson Township Board of Education (The Busch Law Group, L.L.C., attorneys)

**John B. Comegno**, Esq., for respondent, Y.A.L.E., School, Inc., (Comegno Law Group, P.C., attorneys)

Record Closed: June 9, 2021

Decided: June 11, 2021

**BEFORE DOROTHY INCARVITO-GARRABRANT, ALJ:**

## **STATEMENT OF THE CASE**

On June 2, 2021, petitioner, Z.H., filed a request for emergent relief and a due process petition with the Department of Education, Office of Special Education Policy and Dispute Resolution (SPDR).<sup>1</sup> Specifically, Z.H., who is an eighteen-year-old special education student, seeks emergent relief to preclude his graduation from the Y.A.L.E. School, Inc., (YALE), on June 16, 2021, to continue his placement and program at YALE until age twenty-one, and to continue his placement at YALE for the 2021 extended school year session. Additionally, petitioner seeks emergent relief declaring a Settlement Agreement and Release, dated November 29, 2017,<sup>2</sup> (Agreement), between his parents and respondent, Cinnaminson Township Board of Education, (Cinnaminson), void, or illegal, and/or vacating or setting aside the Agreement; thus, permitting him to continue his placement and program at YALE until age twenty-one with contribution from Cinnaminson to YALE's tuition.

## **PROCEDURAL HISTORY**

Petitioner filed this Emergent Petition with SPDR on June 2, 2021. SPDR transmitted the matter to the Office of Administrative Law (OAL), where it was filed on June 3, 2021, and scheduled for oral argument on June 9, 2021. Oral argument was conducted on that date, via ZOOM. The OAL received of petitioner's emergent application with supporting documents and Cinnaminson's brief with supporting documents opposing the application. YALE was not originally noticed by SPDR of the oral argument. However, YALE was contacted by SPDR and YALE was able to participate in the oral argument on June 9, 2021. YALE did not supply any written brief or documents and relied upon its oral arguments. The record closed on June 9, 2021.

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<sup>1</sup> This underlying Due Process Petition has not been transmitted by SPDR to the Office of Administrative Law, at the time of this decision.

<sup>2</sup> This settlement was approved by the Honorable Catherine Tuohy, A.L.J. through a Final Decision Approving Settlement, dated December 11, 2017, in a case captioned W.H. and L.H., o/b/o Z.H. v. Cinnaminson Township Board of Education, and filed under OAL Docket No. EDS 09035-17.

## **FACTUAL DISCUSSION**

For purposes of deciding this application for emergent relief, the following is a summary of the relevant facts derived from the contents of the petitions and from the arguments at the hearing, and therefore I **FIND** them as **FACTS**.

Z.H. is eighteen-years-old. He has attended YALE for the last four years. Z.H. resides in Cinnaminson Township with his parents. Prior to ninth grade, Z.H. was an in-district public school student in Cinnaminson. Z.H. is a special education student, classified as autistic. (P-A.)

In 2017, Z.H.'s parents, on his behalf, filed a due process petition against Cinnaminson, and unilaterally placed Z.H. at YALE. Petitioners were represented by counsel. That matter was captioned W.H. and L.H., o/b/o Z.H. v. Cinnaminson Township Board of Education and filed under OAL Docket No. EDS 09035-17. That litigation was resolved by way of settlement. The Agreement, dated November 29, 2017, was approved through a Final Decision Approving Settlement, dated December 11, 2017. (P-D.) That Agreement, in paragraph 16, memorialized Z.H.'s parents' unilateral placement of him at YALE. Z.H.'s parents agreed to pay the first \$10,000 of yearly tuition to YALE. Cinnaminson was to then reimburse Z.H.'s parents for the base tuition expended by them in excess of the first \$10,000. The Agreement provided that Cinnaminson's financial responsibilities would terminate on June 30, 2021, if Z.H. was eligible to graduate. The only exception, provided for in paragraph 4, was that Cinnaminson was required to reimburse the Z.H.'s parents for the base tuition expended by them for the 2021 extended school year program at YALE, if Z.H. provided proof that he was ineligible to graduate and did not graduate by June 30, 2021. (P-D.)

Paragraph 16 holds Cinnaminson harmless as follows:

...Therefore, the Petitioners agree, jointly and severally, to indemnify and hold forever harmless the Board, its officers,

employees, administrators, and/or agents from any and all claims and actions that may at any time be made or instituted against them by anyone for the purposes of enforcing a claim for damages resulting from or relating to the educational placement, clinical services, evaluations and/or other related services or programs provided to Z.H. while enrolled at and/or attending Y.A.L.E. ... (P-D.)

In paragraph 18, the Agreement further provided that the terms were the total obligation, financial or otherwise to Z.H.'s parents "from the beginning of time through the end of time." Z.H.'s parents expressly agreed to and released Cinnaminson "from any and all further educational responsibility or financial responsibility for Z.H. from the beginning of time through the end of time other than as set forth in this Agreement." (P-D.) In paragraph 19, the Agreement provided as follows:

It is further expressly agreed and acknowledged that the Board shall have no obligation, financial or otherwise, for or towards Z.H.'s education beyond June 30, 2021. Petitioners agree and acknowledge that any education and related services they may desire or seek after June 30, 2021 will be provided by them outside of the District, will be funded entirely by them, and they will not be entitled to reimbursement, education, or services of any kind from the Board. However, pursuant to paragraph 4 of this Agreement, the Board acknowledges that if Z.H. attends ESY 2021 it shall reimburse the Petitioners an amount up to the Y.A.L.E. base tuition for ESY 2021. (P-D.)

Z.H. attended YALE for the 2017-2018 and 2018-2019 school years without issue or dispute related to the claims raised in the instant application with YALE or Cinnaminson. Z.H. had educational service plans developed and implemented by YALE without Cinnaminson's input. (P-A.) Z.H. attended YALE from September 2019 through March 17, 2020, in person without issue or dispute materially related to the claims raised in the instant application. (P-B.) On March 17, 2020, pursuant to Governor Murphy's Executive Order, YALE transitioned to remote learning for the remainder of the 2019-2020 school year, which ended on June 22, 2020. Subsequently, Z.H. attended the 2020 extended school year program remotely. YALE provided remote learning between September 8, 2020, and September 25, 2020, at which time it transitioned its students to a hybrid schedule consisting of in-person

learning in a socially distanced and health compliant manner, and remote learning. Subsequently, at different temporary periods during the 2020-2021 school year, YALE transitioned to remote learning, as a result of COVID-19 cases in the school community. Z.H. had an educational service plan developed and implemented by YALE for the 2020-2021 school year. (P-A.) During this time, Z.H.'s emotional well-being suffered. He suffered from anxiety, depression, and frustration. He received counseling from YALE.

For the 2020-2021 school year, Z.H. was in his fourth year of high school. Z.H. maintains that he lost a portion of his special education and related services that were provided for in his educational services plans from the transition to remote learning in March 2020, through the present. These claims and the relief sought to rectify them are the subject of Z.H.'s due process complaint, which is pending at SPDR. As they specifically relate to the instant emergent matter, those claims were submitted to support the position that Z.H. is not eligible to and should not graduate on June 16, 2021. The claims for undelivered services and the impact of the pandemic on his education are not ripe for determination in this emergent decision. However, they are inextricably connected to the emergent relief requested relative to graduation. No determination about undelivered education or services or supports has been made in this decision and may require a full plenary hearing within the context of the due process petition or other litigation in a court of competent jurisdiction.

YALE has scheduled its graduation for June 16, 2021. Academically, Z.H. has succeeded. (P-C.) However, YALE has not recommended that Z.H. graduate on that date. YALE has made no formal determination that he is eligible or ineligible to graduate. YALE will not issue Z.H. a diploma. Z.H. has indicated that he wants to attend YALE's transition program. YALE is concerned about Z.H.'s emotional state and ability to transition. In its proposed service plan, dated May 14, 2021, YALE recommended and provided for Z.H. to attend its 2021 extended school year program, and enter its Standard-9 (S-9) transition program, which would permit Z.H. to continue his education through YALE's program at Camden County College through which he would be able to take college courses, and have his related services provided to him by

YALE (P-C.) YALE does not issue high school diplomas to S-9 students, until they have completed their individual S-9 program. There is nothing in the prior Agreement or submitted in this matter, which legally prevents Z.H. from attending the S-9 program, should he choose to enroll. Z.H. will not graduate on June 16, 2021.

At present, the Agreement is valid and binding on Cinnaminson and Z.H. through his parents' authority to contract for his benefit, when he was a minor. It provides that Cinnaminson's responsibility to reimburse the parents for tuition expenditures beyond the first \$10,000 at YALE ends on June 30, 2021, if Z.H. is eligible to graduate. It further provides that if Z.H. is ineligible to graduate, then Cinnaminson must reimburse his parents for Z.H.'s 2021 extended school year program at YALE, per paragraph 4 of the Agreement. After that program, Cinnaminson's financial and educational responsibilities to Z.H. cease. No determination has been made that the Agreement is void or illegal or that it should be vacated or set aside. Such application is not appropriate for emergent relief in the instant matter.

### **Arguments**

#### **For petitioner**

Z.H. argued that the COVID-19 pandemic and resulting remote instruction at YALE prevented him from receiving a Free and Appropriate Public Education, (FAPE). COVID-19 made it impossible for YALE to effectuate the components of his educational service plan between March 2020, and the present. Historically, Z.H. did well academically. However, after March 2020, Z.H. had difficulty academically, managing his own time, and engaging in remote learning. Z.H. suffered from frustration, anxiety, depression, and related emotional concerns which became progressively worse through the pandemic. In part, these concerns arose from Z.H.'s remote learning, lack of interaction with peers, teachers, and community, and his lack of supports and services, which had been provided for in his educational plan. Z.H. was proactive and did advise YALE's counselor of his difficulties and YALE increased his counseling to help alleviate his anxiety.

Z.H. argued that he did not receive, social skills training, mobility training, community interaction and training, vocational training, health and wellness training, contact with disabled and typical peers, lifestyle learning, driver's education classes, and situational environmental learning, among other programs. He understood that it may have been impossible for YALE to provide some of these programs and services during the pandemic. Nevertheless, he maintained he missed those essential services and was entitled to them. He submitted he will emotionally spiral down if he does not receive these services in a program at YALE, and that his treating psychiatrist has issued a report and opinion consistent with Z.H.'s concerns. Z.H. submitted that missing these critical programs has left him unable to be self-sufficient and unable to support himself. Z.H. is not equipped to graduate. Z.H. contended that he needs the transitional services which were not provided to him from March 2020, to the present. He contended Cinnaminson must contribute to YALE's tuition for the transition program.

Z.H. argued that the Agreement is voidable and illegal. Z.H. argued that the Agreement is contrary to public policy. Z.H. argued that Cinnaminson may not contract away its IDEA obligations to provide a FAPE to him, by ending his education on June 30, 2021. This is violative of federal law. Z.H. argued that there is no force majeure provision. Z.H. argued that the waiver of claims, *ad infinitum*, by Z.H.'s parents in the Agreement is voidable.

Z.H. argued that he will suffer irreparable harm if he is forced to graduate and not receive the services he missed and those he needs to transition to self-sufficiency and supporting himself. His emotional state will continue to worsen if he is forced to graduate.

Z.H. argued that he has a likelihood of prevailing on the merits. The missed education and related services were a critical part of his educational service plan and were required to prepare him for graduation and the transition to college or a career. The New Jersey Legislature has recognized that special education students were disparately impacted by and not provided services as a result of the pandemic, which impacted their education. Presently, legislative bills are pending to provide and fund an additional year of education and services to special education students, who were deprived, as a result of

the pandemic. Z.H. acknowledged that this is not presently the law; however, he argued it supports his position that students like Z.H. are entitled to the services they missed. Finally, Z.H. argued that the Agreement cannot be relied upon to prevent Z.H. from prevailing on the merits in this instance, in which it did not have any force majeure or government health emergency shut down provisions.

In balancing the equities of the parties, Z.H. argued that the detriments to Z.H. far outweigh Cinnaminson's detriments. Cinnaminson received CARES Act monies which were supposed to provide for student's education, not salary increases and facility improvements. This federal money was to provide for the students, so that they would be able to receive the special education and related services. Z.H. contended that nothing in the Final Decision Approving Settlement issued by the ALJ on December 11, 2017, approved Cinnaminson divorcing from Z.H. and its obligations to provide a FAPE. If the emergent application is not granted, Z.H. will suffer harm and Cinnaminson will be financially benefitted.

Z.H. argued that it is well settled that he is entitled to FAPE. This was supported by the legislative bills and the CARES Act funding received by Cinnaminson, as the state and federal governments understood that special education students need more resources to be guaranteed and provided their education and necessary related services.

Z.H. submitted he is entitled to have his application granted.

**For respondents**

**Cinnaminson**

Cinnaminson argued that Z.H.'s emergent application should be denied. Cinnaminson stated that Z.H. has attended YALE, an approved, private school for his high school career. In this regard, Z.H. has attended all four years of high school and is completing his senior year. It noted that Z.H.'s verified complaint indicated that Z.H.'s academic skills are on grade level, and that he displayed independence and good time



management skills during pandemic-related remote and hybrid learning periods. Z.H.'s post-high school goals include college, employment, and independent living. Cinnaminson maintained that Z.H. is eligible to graduate. He is voluntarily choosing not to graduate.

Cinnaminson argued that the Agreement entered in the previous litigation with Z.H.'s parents is controlling in the instant matter. In the bargained for exchange of the Agreement, Cinnaminson agreed to fund a substantial portion of YALE's tuition through reimbursement of Z.H.'s parents. Cinnaminson is not in privity of contract with YALE. In the Agreement, YALE was designated as a unilateral private school placement by Z.H.'s parents and was not Z.H.'s stay-put placement. Cinnaminson contended there is no right to stay-put in this matter. The parents agreed that Cinnaminson had no control over or contact with YALE and Z.H.'s education and services, as provided at YALE. In this regard, paragraph 16 holds Cinnaminson harmless as follows:

...Therefore, the Petitioners agree, jointly and severally, to indemnify and hold forever harmless the Board, its officers, employees, administrators, and/or agents from any and all claims and actions that may at any time be made or instituted against them by anyone for the purposes of enforcing a claim for damages resulting from or relating to the educational placement, clinical services, evaluations and/or other related services or programs provided to Z.H. while enrolled at and/or attending Y.A.L.E. ... (P-D.)

The parents agreed that Cinnaminson would have no further obligations to Z.H. after June 30, 2021, if Z.H. were eligible to graduate. After June 30, 2021, Z.H.'s parents agreed they would be entirely responsible to fund Z.H.'s education and services. The only exception was for the 2021 extended school year program. The Agreement provided that Cinnaminson would reimburse the parents, if Z.H. attended because he was ineligible to graduate.

Cinnaminson argued that the Agreement was approved by the ALJ on December 11, 2017, and that the Final Decision Approving Settlement indicated that it fully disposed of all issues and controversies and is consistent with the law. Thus, Cinnaminson argued

that the Agreement cannot be illegal or voidable. It was not inconsistent with federal or state law.

Cinnaminson argued that Z.H. has failed to establish that he has had a break in the delivery of services, that he has viable issues concerning placement pending the outcome of the due process proceedings, or that he has issues involving graduation or participation in graduation ceremonies, pursuant to N.J.A.C. 6A:14-2.7(r). Cinnaminson contended that all services were rendered by YALE and not Cinnaminson and a break in services, if any, does not implicate Cinnaminson. Per the Agreement, Z.H. is not entitled to any placement pending the outcome of the due process petition because Cinnaminson did not place Z.H. at YALE. It was a unilateral placement. Any argument concerning Z.H.'s placement would be grounded in not receiving a FAPE. It is well settled that disputes over FAPE are not appropriate subjects for emergent relief. They require a full plenary hearing. Cinnaminson further argued that Z.H. is eligible to graduate this month. Based on the foregoing, Z.H.'s emergent application should be denied.

Cinnaminson further argued that Z.H. has not satisfied his burden to obtain emergent relief. Z.H. cannot suffer irreparable harm through his claims of a denial of a FAPE. Z.H.'s attendance at YALE was a unilateral placement. It was not within Cinnaminson's control or responsibility. Cinnaminson did not participate in Z.H.'s education for his four years at YALE. He is eligible to graduate.

Z.H. has not shown that he has a likelihood of success on the merits. Allegations of a denial of FAPE require a full plenary hearing to be decided. Additionally, Z.H.'s parents were represented by counsel when they negotiated the Agreement. The Agreement was approved as consistent with the law by the ALJ. It is not illegal or voidable.

Cinnaminson argued that a balancing of the equities favored it and not Z.H. Z.H. is voluntarily choosing to pursue the S-9 program. He has preserved his compensatory education and other claims by filing the due process petitioner. Cinnaminson will be harmed if the Agreement is not enforced.

Cinnaminson submitted that Z.H. failed to satisfy these requirements to be granted emergent relief.

## **YALE**

YALE is not recommending Z.H. graduate on June 16, 2021. If Z.H. wants to attend the S-9 program, then he may participate. The S-9 transition program, which includes, college courses, and supports and services was recommended in Z.H.'s recent education service plan. Z.H. will not receive his high school diploma until he completes his S-9 program. YALE is concerned about Z.H.'s anxiety issues and ability to transition.

YALE contended it is a private school which is not subject to FAPE. YALE is not a local education agency. It is not subject to IDEA or N.J.A.C. 6A:14-2.7(r). YALE is not responsible for the Agreement and took no position relative to it. It is not a party to the Agreement. Its contract is with the parents. Any contractual claim that the parents believe they may have should be filed in Superior Court.

## **LEGAL DISCUSSION AND CONCLUSIONS**

New Jersey Administrative Code 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An applicant for emergency relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. N.J.A.C. 1:6A-12.1(a).

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r)1:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings;

- iii. Issues concerning placement pending the outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Here, Z.H. filed his emergent application seeking immediate relief to preclude his graduation from YALE, on June 16, 2021, to continue his placement and program at YALE until age twenty-one, and to continue his placement at YALE for the 2021 extended school year session. Additionally, petitioner seeks emergent relief declaring a Settlement Agreement and Release, dated November 29, 2017, between his parents and Cinnaminson, void, or illegal, and/or vacating or setting aside the Agreement; thus, permitting him to continue his placement and program at YALE until age twenty-one with contribution by Cinnaminson. Z.H. has a due process petition pending with SPDR which includes claims related to the relief sought within this emergent application and compensatory education. The due process petition has not been transmitted to the OAL.

Most of the relief sought by Z.H. in the instant application is not appropriate for decision in an emergent summary proceeding. The relief requested, continuing Z.H.'s placement at YALE until age twenty-one with contribution by Cinnaminson, sounds in FAPE claims that can only be raised in a due process petition and litigated through motion practice or a full plenary hearing. I **CONCLUDE** such claims are not appropriate for emergent relief herein. Similarly, claims seeking to void, vacate, or set aside the Agreement are not ripe for emergent relief, pursuant to the New Jersey Administrative Code, and in this tribunal. Z.H. or Cinnaminson would have to make such claims in an agency or court of competent jurisdiction. Therefore, I **CONCLUDE** such claims are not appropriate for emergent relief herein.

Based on the circumstances herein, I **CONCLUDE** there has not been any break in services warranting an emergent decision. Z.H. filed his due process petition alleging that education, and services and supports provided for in his educational service plan developed and implemented by YALE were not delivered to him between March 2020, and the present. Those claims are preserved as compensatory education claims in

Z.H.'s filed due process petition. As contemplated in N.J.A.C. 6A:14-2.7(r)1(i), those compensatory education claims are not emergent, as Z.H. argued. Those claims require testimony and a full plenary hearing.

Similarly, I **CONCLUDE** Z.H.'s issues concerning his placement pending the outcome of due process proceedings cannot be disposed of and resolved by way of an emergent application. Cinnaminson rightfully noted that it did not place Z.H. at YALE. It has had no control over YALE's delivery of special education and related services to Z.H., as a result of the Agreement. The Agreement specifically provided for the limits of what would occur in June 2021, if Z.H. was eligible or not to graduate. As indicated above, the new relief requested by Z.H. regarding a continued placement at YALE with a contribution from Cinnaminson can only be raised in a due process petition and litigated through motion practice or a full plenary hearing. This request for relief is not what was contemplated by N.J.A.C. 6A:14-2.7(r)1(iii) based on the totality of circumstances presented in this matter.

Further, I **CONCLUDE** this matter involves the issue of graduation, which could require emergent relief, pursuant to N.J.A.C. 6A:14-2.7(r)1(iv). This issue was not made moot, when YALE did not recommend Z.H. to graduate on June 16, 2021.

The issue of whether Z.H. is eligible to graduate, thus triggering the end of Cinnaminson's financial reimbursement obligation to Z.H.'s parents, requires motion practice and briefing or a full plenary hearing. In this matter, the issues related to YALE's delivery to Z.H. of the education and services provided for his educational service plan and Z.H.'s compensatory education claims are inextricably intertwined with Z.H.'s eligibility to graduate and the enforcement of the Agreement. It must be determined if the special education and services provided for in Z.H.'s education service plan were so critical to his progress, that their omission made him ineligible to graduate. That cannot be determined in a summary emergent proceeding. However, YALE's graduation is scheduled for June 16, 2021. Therefore, this matter does involve an issue of graduation to be resolved in an emergent application. Forcing Z.H. to

graduate before he is able to raise fully those claims gives rise to an appropriate application for emergency relief.

Emergency relief may be granted pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), if the judge determines from the proofs that the following conditions have been established:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.S.A. 6A:14-2.7(s); Crowe v. DeGioia, 90 N.J. 126 (1982), codified at N.J.A.C. 6A:3-1.6(b).

The petitioner bears the burden of satisfying all four prongs of this test. Crowe, 90 N.J. at 132-34. First, the petitioner must demonstrate irreparable harm will occur if he graduates. Harm is irreparable when there can be no adequate after-the-fact remedy in law or in equity; or where monetary damages cannot adequately restore a lost experience. Crowe, 90 N.J. at 132-133; Nabel v Board of Education of Hazlet, EDU 8026-09, Final Decision on Application for Emergent Relief (June 24, 2009).

YALE has not recommended Z.H. for graduation on June 16, 2021. YALE has made no formal determination that he is eligible or ineligible to graduate. YALE has recommended that Z.H. continue in its S-9 transition program if he chooses to do so. YALE will not be giving Z.H. his high school diploma. YALE is concerned about Z.H.'s emotional state and ability to transition. Inherent in these facts is that, at this time, if Z.H. were required to graduate, without a determination of his eligibility or ineligibility, which as indicated above is inextricably related to his claims of lost services and

compensatory education, issues related to the Agreement, and issues related to a continued placement, Z.H. would suffer irreparable harm. Therefore, I **CONCLUDE** Z.H. would suffer irreparable harm if he is ordered to graduate, now. His graduation should be forestalled.

It may be that after subsequent motion practice or a full plenary hearing on the due process petition and any other related litigation, Z.H may be determined to have been eligible to graduate. However, that determination cannot be made based on the application, arguments, and documents submitted with this prayer for emergent relief. I further **CONCLUDE** that irreparable harm will occur if Z.H. graduates without a full opportunity to contest the validity of the Agreement, which is not an emergent application, because he would be foreclosed from contesting its viability and his divorce from Cinnaminson, otherwise.

Second, the petitioner must demonstrate he has a settled legal right to the relief requested. In this regard, it is well settled that educational plans provide goals and objectives in academic, social, emotional, and behavior areas, so that students may progress from school and childhood into higher education, employment, self-sufficiency, and adulthood. Z.H. has a well settled right to pursue his due process petition and his claims against YALE. He has a well settled legal right to forestall his graduation and have his formal eligibility or ineligibility for graduation established through motion practice or a plenary hearing. He has a right to contest the validity of the Agreement in a court or tribunal of competent jurisdiction. Therefore, I **CONCLUDE** that Z.H. has satisfied this prong.

The third prong petitioner must satisfy is whether he has a likelihood of prevailing on the merits of the underlying claim. It can be gleaned from YALE's determination not to recommend Z.H. for graduation and YALE's concern for his anxiety and transition that Z.H. requires more services and supports to become self-sufficient and self-supporting. Taking those facts into consideration, there is a likelihood that Z.H. will prevail on the merits and is not eligible to graduate at this time. If such a determination were made, it would mean that Cinnaminson may be responsible for reimbursement to

the parents for the 2021 extended school year tuition, per the Agreement. That is specifically not ordered herein, because a determination about Z.H.'s eligibility to graduate has not been made. This does not mean that Cinnaminson is responsible for a subsequent transition program, education, services or supports, should Z.H. be determined to be ineligible to graduate. That would be an issue for a due process proceeding or a proceeding relative to the Agreement. I **CONCLUDE** that the petitioner has demonstrated a likelihood of prevailing on the merits of his underlying claim that he is not sufficiently eligible to graduate.

The fourth prong of the test petitioner must satisfy to be entitled to emergent relief is to demonstrate a balancing of the equities and interests of the parties and show that Z.H. will suffer greater harm than the respondent if the relief is not granted. Many senior high school students experience some form of anxiety or uncertainty regarding their post-graduation plans. However, because of Z.H.'s emotional status and the events of the last year, he has experienced heightened anxiety and emotional concerns, which were recognized by YALE. Z.H. wants the ability to explore, not only claims for compensatory education raised in his due process complaint, but also whether the Agreement entered into by his parents and Cinnaminson is valid and binding on him. Additionally, Z.H. wants a determination about whether the failure to deliver the alleged education and services by YALE made him ineligible to graduate and unable to successfully transition post-graduation to college and self-sufficiency. The requested relief is to stay his graduation until those determination may be made.

If Z.H. is determined ineligible to graduate at this time, then Cinnaminson would bear their cost for reimbursement for the 2021 extended school year program, per the Agreement. When balancing the equities, the burden is greater to Z.H. Therefore, I **CONCLUDE** that Z.H. has demonstrated that he will suffer greater harm than Cinnaminson and YALE, if the emergent relief is not granted.

The petitioner must demonstrate all four conditions set forth in Crowe and as codified in N.J.A.C. 6A:3-1.6(b) to be granted the emergent relief to stay his graduation. Z.H. satisfied all four prongs. Therefore, I must **CONCLUDE** that Z.H is entitled to the



emergent relief forestalling his graduation on June 16, 2021, until a formal determination of his eligibility to graduate is made, and the due process claims and any other related litigation, which may ensue, are resolved. Accordingly, the request for emergent relief pursuant to N.J.A.C. 6A:14-2.7(s) must be granted on this limited issue.

Nothing in this decision prevents Z.H. from continuing his education through YALE. However, this decision should not be interpreted to mean that Cinnaminson is presently obligated to reimburse the parents for YALE's tuition should Z.H. choose to attend YALE's extended summer program or S-9. That determination must await further tribunal, or court, order or decision. Cinnaminson has the right to enforce the Agreement. If successfully enforced, Z.H. may still transition to the S-9 program at his or his parents' cost.

**ORDER**

Having concluded that the petitioner satisfied the four requirements for emergent relief, the petitioner's request for emergent relief is **GRANTED**, on the limited issue as set forth in this decision. Accordingly, I **ORDER** that Z.H.'s graduation on June 16, 2021, is hereby forestalled.

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 Policy and Dispute Resolution.

June 11, 2021

DATE



DOROTHY INCARVITO-GARRABRANT, ALJ

Date Received at Agency:

\_\_\_\_\_

Date Mailed to Parties:

\_\_\_\_\_

/dm

**LIST OF EXHIBITS**

**For petitioner:**

1. P-A – YALE Educational Service Plan dated May 24, 2019
2. P-B – YALE Educational Service Plan dated June 5, 2020
3. P-C – YALE Educational Service Plan dated May 14, 2021
4. P-D – Settlement Agreement dated November 29, 2017

**For respondent, Cinnaminson:**

R-1 –Final Decision Approving Settlement dated December 11, 2017

**For respondent, YALE:**

None.