



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 05003-21

AGY REF NO. 2021-32939

R.R. AND L.R. ON BEHALF OF B.R.,

Petitioner

v.

WEST ORANGE TOWN BOARD OF EDUCATION,

Respondent

Staci J. Greenwald, Esq. for Petitioners (Sassan, Greenwald & Wesler,
attorneys)

Marc G. Mucciolo, Esq., for Respondent (Methfessel & Werbel, P.C., attorneys)

Record Closed: June 15, 2021

Decided: June 16, 2021

BEFORE THOMAS R. BETANCOURT, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Request for Emergent Relief with the Office of Special Education Policy and Procedure (OSEP) in the New Jersey Department of Education (DOE). The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on June 11, 2021, to be heard on an emergent basis.

Petitioner seeks a determination on behalf of the student that the Individualized Education Program (IEP), dated July 24, 2020, developed at the student's prior district, is the stay put placement and program.

Oral argument on the request for emergent relief was heard on June 15, 2021.

FACTUAL BACKGROUND

Petitioners reside in New York City. B.R. is enrolled at the Winston Preparatory School in New York, N.Y., in accordance with an IEP dated July 24, 2020. Petitioners will be relocating to West Orange in June 2021. B.R. becomes the responsibility of the Respondent District on July 1, 2021.

B.R. is a thirteen-year-old student diagnosed with Autism Spectrum Disorder and Executive Functioning Disorders.

B.R. attended the Parkside School in New York, NY prior to attending Winston.

Petitioners notified the Respondent District in March 2021 that they would be relocating to West Orange. They provided the student's records. Permission was granted for the District to conduct Speech and Occupational therapy evaluations.

An initial IEP meeting was held on June 4, 2021. The Child Study Team (CST) determined that B.R. was eligible for special education and related services under the category of Other Health Impaired (OHI). The District offered an IEP with a program and placement in the District's middle school.

Petitioners through their attorney, sent a letter, dated June 7, 2021, advising that the proposed IEP was substantially different from the IEP developed in New York City. The letter went on to request an out of district placement at Winston Preparatory School until an observation of the District's proposed program could occur in September of this year.

The District responded the same date, through counsel, that it believed the proposed IEP was appropriate for B.R. and was comparable to his current IEP.

Petitioners filed the within emergent application seeking stay put at Winston Preparatory School pending the outcome of the underlying due process petition.

LEGAL ANALYSIS AND CONCLUSION

Initially, it must be determined if petitioner is entitled to request emergent relief.

A party may only request emergent relief for the following reasons, in accordance with 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 education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

In the instant matter, Petitioners are raising an issue as to placement pending the

outcome of a due process hearing. They are entitled to make this emergent application.

As this matter revolves around stay put, the elements of Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982) (enumerating the factors later codified at N.J.A.C. 6A:14.2-7(s)1) need not be analyzed.

Specifically, petitioners are seeking stay put and maintaining that the IEP July 24, 2020 is the stay put. That IEP was developed in the student's prior district, the New York City Board of Education. Petitioners are moving to the Respondent District, which will assume responsibility for the student's education on July 1, 2021.

As a special corollary of injunctive relief under the IDEA, one of that law's important procedural safeguards is its "pendent placement' or 'stay put' provision." Susquenita Sch. Di's v. Raelee S., 96 F.3d 78, 82 (3d Cir. 1996). The IDEA provides:

During the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents or guardian otherwise agree, the child shall remain in the then current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings have been completed.

[20 U.S.C. §1415(e)(3)(A)]

Consistent therewith, state regulations provide:

Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student's classification, program or placement unless both parties agree, or emergency relief as part of a request for a due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. §1415(k)4 as amended and supplemented.

[N.J.A.C. 6A:14-2.7]

However, in this matter, the Petitioners have relocated from out of state to New Jersey. They seek as stay put the previous placement at the Winston Preparatory School in New York City, with that placement being made at the Winston Preparatory School located in Whippany, New Jersey.

N.J.A.C. 6A:14-1.1(g) states in pertinent part:

(g)When a student with a disability transfers from one New Jersey school district to another, or from an out-of-State school district to a New Jersey school district, the child study team of the school district into which the student has transferred shall conduct an immediate review of the evaluation information and the IEP and, without delay, in consultation with the student's parents, provide a program comparable to that set forth in the student's current IEP until a new IEP is implemented, as follows:

2. If the student transfers from an out-of-State school district, the appropriate district board of education staff shall conduct any assessments determined necessary and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.

3. The appropriate district board of education staff shall take reasonable steps to promptly obtain the student's records, including the current IEP and supporting documentation, from the previous school district in accordance with N.J.A.C. 6A:32. The school district in which the student was previously enrolled shall take reasonable steps to promptly respond to all requests for records of students transferring from one district board of education to another district board of education.

The only issue herein is whether or not the proposed IEP offered by Respondent is comparable to the current IEP being implemented where B.R. attends the Winston Preparatory School.

At Winston, B.R. attends classes with eight other students, all of which are classified. The proposed IEP calls for classes of approximately twenty students. B.R.

would have a general education teacher, a special education teacher and a 1:1 aide. Further, Winston has approximately 236 students. The District school proposed for B.R. would approximately 500 students.

Petitioners argue that the two IEPs are not comparable and provide different settings. Respondent argues the contrary, that what is proposed is comparable to what B.R. receives presently.

While both IEPs offer similar types of programs, the actual setting for the delivery of those programs are substantially different and not comparable.

As Winston has a campus in Whippany, New Jersey offering the same program B.R. currently receives at the Winston school in New York City, it would be more prudent to maintain that setting than to change it pending the outcome of the underlying due process petition.

Based upon the foregoing I **CONCLUDE** that petitioner's request for emergent relief should be **GRANTED**.

ORDER

It is hereby **ORDERED** that petitioner's request for emergent relief is **GRANTED**;
and,

It is further **ORDERED** that stay put pending the outcome of the due process petition shall be at the Winston Preparatory School located in Whippany, New Jersey;
and

It is further **ORDERED** that Respondent shall be responsible for payment of tuition costs and transportation costs for the same.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). 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 Programs.



June 16, 2021

DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency

Date Mailed to Parties:

db

APPENDIX

List of Moving Papers

For Petitioners:

Request for emergent relief with brief and Exhibits:

A. IEP dated July 24, 2020

B. Neuropsychological Evaluation by Melissa Fiorinos-Grafman, Ph.D.

C. IEP dated June 4, 2021

Certification of Lit Raz, parent

For Respondent:

Brief in opposition to request for emergent relief

Certification of Yelena Rushkoff, Psychologist/Case Manager