



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS01346-22

AGENCY DKT. NO. 2022-33916

K.R. AND J.W. ON BEHALF OF L.W.,

Petitioners,

v.

FRANKLIN TOWNSHIP BOARD OF

EDUCATION,

Respondent.

K.R. and J.W., on behalf of L.W., petitioners, pro se

B. Michael Borelli, Esq., for respondent (Law Office of B. Michael Borelli,
attorney)

Record Closed: February 25, 2022

Decided: February 25, 2022

BEFORE **CATHERINE A. TUOHY**, ALJ:

STATEMENT OF THE CASE

Petitioners, K.R. and J.W., on behalf of their son, L.W., filed a petition for emergent relief against the respondent, Franklin Township Board of Education seeking a determination that the Y.A.L.E. School, Marlton, is the “stay put” placement pending the due process proceeding. Respondent does not deny that Y.A.L.E. is the “stay put”

placement, but cannot consent to same due to Y.A.L.E. School's position that it is no longer an appropriate educational placement for L.W.

PROCEDURAL HISTORY

Petitioners filed both a due process petition and a petition for emergent relief with the Office of Special Education (OSE) on February 22, 2022. The emergent petition seeks continued placement at the Y.A.L.E. School, Marlton as the "stay put" placement pending an appropriate program and placement. The due process petition seeks an appropriate program and placement, a functional behavior assessment, development of a behavior intervention plan, development of an individualized health plan, an assistive communication device, behavioral data, communication logs and supports. The emergent petition alone was transmitted to the Office of Administrative Law (OAL) on February 22, 2022, as a contested case pursuant to N.J.S.A. 52:14B-1 to 15 and 14F-1 to 13, while the underlying due process petition remained at the OSE.

In response to the emergent application, respondent submitted a February 24, 2022, certification from Rachel Sautter, the Director of Educational Services for the Southeast campus of the Y.A.L.E. School in Marlton, with attached exhibits A through D, all of which were considered with this emergent application.

The parties presented oral argument on the emergent relief application on February 25, 2022, via zoom audio/video technology, due to the continued suspension of in person proceedings at the OAL due to the COVID-19 pandemic. The record closed on February 25, 2022.

FACTUAL DISCUSSIONS

For Petitioners

Petitioners' son L.W. qualifies for special education and currently attends fourth grade at the Y.A.L.E. School Southeast Autism Program located in Marlton, N.J. L.W. has been at the Y.A.L.E. School for five years. There has never been a problem with his

behavior until this school year, when his behaviors escalated. The parents have been working with respondent to find a more appropriate placement for L.W. as the Y.A.L.E. school has indicated that they are no longer an appropriate educational placement for L.W. and seek his withdrawal from their program. Petitioners and respondent have found a more appropriate placement for L.W. in the Bancroft School. The Bancroft School has accepted L.W., but due to staffing issues, he would be unable to attend until the beginning of the summer Extended School Year (ESY) program. Although petitioners agree that Y.A.L.E. School is no longer the best placement for L.W., there is no other more appropriate placement for L.W. while waiting to transition to Bancroft. Petitioners argue that L.W. needs the structure of a program and will not do well on home instruction as they had learned during remote instruction occasioned by COVID when L.W. regressed and required increased medication. Petitioners filed this emergent petition for “stay put” to keep L.W. at Y.A.L.E., pending his placement at Bancroft. Y.A.L.E. School was the last agreed upon educational placement for L.W.

For Respondent

L.W. is a fourth-grade student who qualifies for special education and related services and resides in the Franklin Township School district. Respondent contracted with the Y.A.L.E. School Southeast to enroll L.W. in the Y.A.L.E. 2021-2022 school year program. (Exhibit B to certification of Rachel Sautter.) The Y.A.L.E. School Southeast in Marlton, N.J., is an approved private school for children with disabilities, specifically the disability of Autism Spectrum Disorder. Although it is not disputed that the last agreed upon educational placement for L.W. is the Y.A.L.E. School in Marlton, the Y.A.L.E. School seeks the withdrawal of L.W. from its program due to violent, aggressive, and compulsory behaviors that have resulted in harm to himself, harm to others and harm to property and that they no longer are an appropriate educational placement for L.W. Respondent district has been working collaboratively with the parents and have found a more appropriate placement for L.W. at the Bancroft School however they will not be able to accept him into their program until the beginning of their ESY program. The respondent concedes that they cannot meet L.W.’s needs in district which is why they contracted with and placed L.W. at Y.A.L.E., Marlton. Respondent is also unable to provide L.W. with appropriate homebound instruction at this time. The more appropriate placement for L.W.

in the interim, while waiting for admission to the Bancroft School, is for L.W. to remain at Y.A.L.E.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An emergency relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justify the relief sought. Each application is required to be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

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

- 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.

In this case, petitioners assert that they are entitled to emergency relief because the contested matter involves issues involving a break in the delivery of services; issues involving disciplinary action, including manifestation determinations and determinations of interim alternate educational settings; and issues concerning placement pending the outcome of the due process proceedings. Petitioners contend that L.W. should remain at the Y.A.L.E. School, Marlton, pending the outcome of the underlying due process proceedings or pending an agreed upon placement and program at the Bancroft School.

The “stay put” provision under the Individuals with Disabilities Education Act (IDEA) provides an automatic preliminary injunction, preventing a school district from making a change in placement from the last agreed upon IEP, during the pendency of a petition challenging a proposed IEP. 20 U.S.C.S. § 1400, et seq, Drinker v Colonial School District, 78 F.3d 859, 864 (3d Cir. 1996, and Zvi D. v Ambach, 694 F.2d 904, 906 (2d Cir. 1982). The purpose of “stay put” is to maintain the status quo for the child while the dispute over the IEP remains unresolved. Ringwood Bd. of Educ. v. K.H.J., 469 F.Supp.2d 267, 270–71. (D.N.J. 2006.)

There are two exceptions to the “stay put” provision. The first is if the parties agree to a different placement, otherwise “the child shall remain in the then-current educational placement of the child.” 20 U.S.C.S. § 1415(j). The second exception arises under the disciplinary provisions of IDEA, 20 U.S.C.S. § 1415(k), which has not been raised as an issue by either of the parties.

The last agreed upon educational placement for L.W. is the contracted private placement at the Y.A.L.E. School, Marlton. That becomes his “stay put” placement. The “stay put” provision provides in relevant part that during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child remain in the then-current educational placement of the child 20 U.S.C.A. § 1415(j). The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child remain in his or her current educational placement “during the pendency of any administrative or judicial proceeding regarding a due process complaint.” 34 C.F.R. § 300.518(a) (2016); N.J.A.C. 6A:14-2.7(u).

The contract between the respondent Franklin Township Board of Education and the Y.A.L.E. School for L.W.’s enrollment at the Y.A.L.E. School allows for the termination of the agreement by the private school Y.A.L.E. in accordance with N.J.A.C. 6A:14-7.7(a) or by the sending district respondent in accordance with N.J.A.C. 6A:14-7.7(b). However, if the parents exercise their rights to disapprove the termination of the services at Y.A.L.E. by requesting a due process hearing, then the terms of the contract shall remain in full force and effect, unless the parties otherwise agree, or the matter is resolved (paragraph

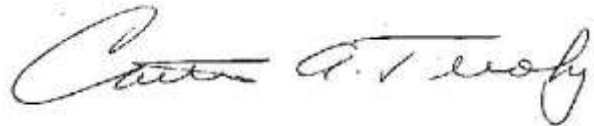
11, Exhibit B to certification of Rachel Sautter.) Since petitioners have filed for due process, the contract remains in full force and effect, despite attempts to have L.W. be withdrawn from the Y.A.L.E., Marlton autism program.

Therefore, for the foregoing reasons, I **CONCLUDE** that petitioners are entitled to the emergent relief requested and that L.W.'s "stay put" placement is at the Y.A.L.E. School, Marlton, unless the parties agree to a change in placement.

ORDER

It is **ORDERED** that the petitioners' application for emergent relief is **GRANTED**.

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 Policy and Dispute Resolution.



February 25, 2022
DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

CAT/tat