



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO.: EDS 17588-24

AGENCY DKT. NO.: 2025-38401

**Y.H. AND R.M. ON BEHALF OF R.M.,**

Petitioners,

v.

**ELIZABETH CITY BOARD OF EDUCATION,**

Respondent.

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**Andrew J. Morgan**, Morgan Associates, petitioners, Y.H., and R.M. o/b/o R.M.  
(Designated Trial Advocate, pursuant to N.J.A.C. 1:1-5.4(a)(7), N.J.A.C.  
1:6A-5.1(b) 20 U.S.C. § 1415(d), and 34 C.F.R. § 300.508(a)(1))

**Richard P. Flaum**, Esq., respondents, Elizabeth City Board of Education,  
(DiFrancesco Bateman, Kunzman, Davis, Lehrer & Flaum, LLC, attorneys)

Record Closed: December 20, 2024

Decided: December 23, 2024

BEFORE **JULIO C. MOREJON**, ALJ:

**STATEMENT OF THE CASE**

Petitioners' seek to invoke the stay-put provision of the IDEA contained in 20 U.S.C. § 1415(j) and 34 C.F.R. § 300.518(a) (2024). In doing so, petitioners, Y.H. and R.M. on behalf R.M., seek an order by way of Request for Emergent Relief pursuant to

N.J.A.C. 6A:14-2.7, ordering respondent, Elizabeth City Board of Education, place the student, R.M. in his previous placement in a shared in-class-resource ("ICS"), as the then "current education placement", and that the same be continued pending the determination of petitioner's Due Process Petition.

### **PROCEDURAL HISTORY**

On December 2, 2024, petitioner filed with the New Jersey Department of Education, Office of Special Education (OSE) a Petition for Due Process (Petition), and on December 16, 2024, petitioners filed a request for emergency relief seeking an order to have respondent, Elizabeth City Board of Education (the District), place the student in his previous placement in a shared in-class-resource ICS, as the then "current education placement", and that the same be continued pending the determination of petitioner's Due Process Petition. Petitioners' seek a stay put order pursuant to parents seek to invoke the stay-put provision of the IDEA contained in 20 U.S.C. § 1415(j) and 34 C.F.R. § 300.518(a) (2024).

As required by New Jersey Administrative Code (N.J.A.C.) 1:6A-12.1, OSE forwarded the request for emergent relief to the Office of Administrative Law (OAL) for a hearing on the emergent issues stated in the request. The same was filed with the OAL on December 16, 2024.

An initial telephone status conference was held on December 17, 2024. The District filed its opposition to the underlying emergent relief. On December 20, 2024, oral argument was heard via zoom, at the OAL. Petitioner, R.M., appeared and testified. The record closed on December 20, 2024.

### **FACTUAL SUMMARY**

The following factual summary in this matter are contained in petitioners' brief in support of emergent relief and are not controverted by the District.

Petitioners, Y.H. and R.M. are the parents of R.M., a 6-year-old male student who has been deemed eligible for special education and related services under the classification category of Autism. R.M. attended the public kindergarten program in the District during the 2023-2024 academic year in a fully shared, in-class-resource classroom with general and special education certified teachers. During this year in the District, the student's academics and behaviors were managed well, and meaningful progress was made. When the student exhibited a hypersensitivity to noise or other stimuli or social-emotional challenges, the student's two teachers were able to avoid tantrums in class, or refusal to complete and attempt schoolwork. R.M.'s kindergarten report card demonstrated all excellent ratings or, at a minimum, very good ratings. (Exhibit 2). The program was so effective that the student began reading, doing basic math and writing.

On May 24, 2024 an annual IEP meeting was held. The IEP developed from the May 24, 2024 meeting, which provided for the student's attendance in an ICS program (a 2-teacher model of a special and general education teacher) during Summer 2024, and onward to the 2024-2025 school year. Petitioners' argue that the May 24, 2024, IEP is the last agreed upon IEP this is subject to the stay-put provisions.

Sometime thereafter, when the extended school year was to commence (2024 ESY), petitioners were concerned that the student's IEP was being changed for the 2024 ESY and the coming school year, 2024-2025. Specifically, the student was to enter a language and learning class ("LLD"), which serves challenged and disabled students. On June 7, 2024, petitioners filed a petition for due process with OSE (June due process petition), challenging the 2024 ESY placement. (The case was docketed as OAL Docket No.: EDS 09736-24, Agency Dkt. No.: 2024- 37698. Petitioner followed up on June 25, 2024 with a letter to Michael Ojeda, Director of Special Services, reminding him that 'stay put' was invoked as to the May IEP, and that they expected extended school year services for their son to commence immediately.

After the June due process petition was filed, the District placed the student in a classroom with only one teacher for the ESY 2024 program. The general education teacher was unable to implement and deliver modifications and accommodations or

provide special education services to the student during the ESY 2024 program. At all times, following the May 24, IEP meeting, and subsequent to filing the June due process petition, the petitioners expressed to the District that they wanted the same format for the student, as he was offered in the kindergarten class, for school year 2023-2024, and as contained in the May IEP. Petitioners' argue that in no less than 39 email exchanges, the petitioners made their requests understood that a shared two-teacher model was requested and appropriate. Negative and destructive changes was observed by the petitioners and school staff as early as the extended school year regarding the behaviors of the student, and his willingness to do schoolwork. Thereafter, subsequent to the filing of the June due process petition, a settlement agreement was completed and executed by the parties, and the same was incorporated in a Final Decision.

Petitioners continually requested of the District that the terms of the settlement agreement be reflected in the student's IEP for the coming school year. The District did not respond, and a meeting was held with the District, at which time, Mr. Malik the District's supervisor of special education services, informed petitioners that the settlement agreement concerning the June due process petition that the District could not comply with the terms of the settlement agreement invoking stay put of the student's last agreed upon IEP for school year 2023-2024, as the District does not offer a two-teacher, shared in-class-resource model to any special education children grades 1-8.

As a result of the District not complying with the terms of the settlement agreement, petitioners filed for enforcement of the final decision of the settlement agreement, of the June due process petition. Petitioners argue that the District entered into the settlement agreement of their June due process petition knowing that it did not offer two-teacher, shared in-class-resource model to any special education children grades 1-8., and therefore, they seek stay-put of the May IEP. Petitioners' argue that the District entered into a "fraudulent" settlement agreement of the June due process petition, and therefore the District and the parents have not agreed to any changes to the students 2023-2024, IEP, which forms the basis of the filing of the underlying due process petition.

The District argues that the duly signed settlement agreement was null and void as the District had eliminated all shared two-teacher in-class-resource classes from grade

1 through grade 8, and therefore, the District could not place the student in his kindergarten IEP placement. Specifically, the District argues that It is the practice and policy of schools in the District to provide one general education teacher and one special education teacher for students on IEPs in co-taught Kindergarten classes. Once those students progress to 1st grade through 8th grade, the District provides a second teacher in the general education classroom for math and language arts classes for 45 minutes per class respectively. The District addresses student behavioral issues by assigning them a personal aide to help manage and control their conduct. (Certification of Miguel Ojeda).

After the current school year commenced, due to the students decline in behavior and petitioners' continued request to invoke stay-put of the May 2024 IEP, the District convened an IEP meeting on October 1, 2024, and issued an IEP, that petitioners rejected. Thereafter, on November 21, 2024, an IEP meeting was held, and the District reiterated its position that it is could not provide one general education teacher and one special education teacher for students on IEPs in co-taught Kindergarten classes, who move on to grades 1 to 8, as it is the policy of the District that a second teacher in the general education classroom for math and language arts classes for 45 minutes per class respectively. The District argued that it addresses student behavioral issues by assigning them a personal aide to help manage and control their conduct. The District argues that the stay-put IEP is the October 1, 2024, IEP.<sup>1</sup> Petitioners assert, as they have since they filed their June due process petition, that stay-put is the May 2024 IEP.

### **LEGAL ANALYSIS AND CONCLUSION**

In the underlying case, it is unnecessary to consider whether the criteria set forth in Crowe v. De Gioia, 90 N.J. 126 (1982) have been satisfied in granting emergent relief. When the emergent-relief request effectively seeks a “stay-put” preventing the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the “stay-put” provision under the Individuals with Disabilities Education Act

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<sup>1</sup> During the telephone status conference held on December 18, 2024, counsel for the District stipulated that the May 2024, was the stay-put IEP, and that despite the same, the District could not provide the same service for students in grades 1 through 8 in the District. On December 20, 2024, during oral argument, counsel for the District informed me that he had spoken in “error” at the telephone conference regarding stay-put being the May 2024, IEP, and that the District invoked the October 2024, IEP as “stay-put”.

(“IDEA”), 20 U.S.C. § 1400, et seq. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982)) (stay-put “functions, in essence, as an automatic preliminary injunction”).

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 stay-put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits and removes the court’s discretion regarding whether an injunction should be ordered. Drinker, 78 F.3d 859. Its purpose 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). 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 shall remain in the then-current educational placement of the child.” 20 U.S.C. A. §1415(j).

It is against this backdrop that I am asked to rule which IEP is “stay-put” in this matter. Is it the May 2024 IEP, which petitioners and members of the CST entered into, which was to provide the student with a fully shared, in-class-resource classroom with general and special education certified teachers, in the 2024 ESY and the 2024-2025 school year? Or is stay-put the October 2024 IEP, which the District argues once kindergarten students progress to the 1<sup>st</sup> grade through 8<sup>th</sup> grade, converts to a program that provides a second teacher in the general education classroom for math and language arts classes for 45 minutes per class respectively, and which addresses student behavioral issues by assigning them a personal aide to help manage and control their conduct?

The stay-put provision requires a child to remain in the “then-current educational placement” pending the due process hearing “unless the State or local education agency and the parents otherwise agree.” This is the language that is the operative placement functioning at the time of the filing of the due process hearing enumerated in Drinker v.

Colonial Sch. Dist., 78 F.3d at 867. For the “then-current placement,” the Third Circuit has adopted the position that it is the operative placement actually functioning at the time of the filing for the due process hearing. Id. More specifically, if the child has an IEP that is in effect at the time of filing, its placement is the stay-put. Conversely, if no IEP is in effect, the stay-put placement is that under which the child is actually receiving instruction at the time the dispute arises. Id.

In Drinker, the court ruled that the then-current placement was the elementary school in a neighboring district, per the child’s then operative IEP, rather than the elementary school within the district that the district proposed, and the parents challenged. Id. For another example, the federal district court of New Jersey ruled that the 12th-grade program of a student at a private special education school, per his IEP, was the then-current educational placement upon his challenge to the district’s contention that he had graduated. B.A.W. v. E. Orange Bd. of Educ., 55 IDELR ¶ 76 (D.N.J. 2010).

In the within matter, it is evident that the “then-current educational placement” is contained in the May 2024, IEP, which the parents and the District agreed upon. Once petitioners became aware that the student’s 2024 ESY program was different than his then existing and agreed upon IEP of May 2024, petitioners filed a due process petition in June 2024. When the parents and the members of the District sought to settle the June due process petition, by incorporating the May 2024, IEP, they were informed that the same could not be done as it is the practice and policy of the District not to offer the same IEP program contained in the May 2024, IEP that the District offers its 1<sup>st</sup> to 8<sup>th</sup> grade special education students.

As a result of the District’s change in policy for 1<sup>st</sup> to 8<sup>th</sup> grade special education students, petitioners have filed a due process petition on December 2, 2024, (the underlying due process petition), invoking “stay-put” as the May 2024 IEP, which I **CONCLUDE** is the “then-current educational placement”, as petitioners and the District do not “otherwise agree” to another IEP.

Having heard the arguments of petitioners and the District, and considering all documents submitted herein, I **CONCLUDE** that “stay-put” is the May 2024 IEP, in

accordance with the provision under the IDEA, 20 U.S.C. § 1400, et seq. and as set forth in Drinker v. Colonial Sch. Dist., 78 F.3d 864.

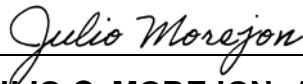
**ORDER**

**IT IS ORDERED** that Petitioner's application for emergent relief is **GRANTED**.

This order on application for emergency relief remains in effect until a final decision is issued on the merits of the case. If the parent or adult student believes that this order is not being fully implemented, then the parent or adult student is directed to communicate that belief in writing to the Director of the Office of Special Education. Since the parents requested the due process hearing, this case is returned to the Department of Education for a local resolution session under 20 U.S.C. § 1415(f)(1)(B)(i).

December 23, 2024 \_\_\_\_\_

DATE

  
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**JULIO C. MOREJON, ALJ**

Date Received at Agency

December 23, 2024 \_\_\_\_\_

Date E-Mailed to Parties:

December 23, 2024 \_\_\_\_\_

JCM/lr