



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENCY RELIEF

OAL DKT. NO. EDS 11392-24

AGENCY DKT. NO. 2025-37868

S.M. ON BEHALF OF D.M.,

Petitioner,

v.

**TRENTON PUBLIC SCHOOL DISTRICT
BOARD OF EDUCATION AND TRENTON
STEM-TO-CIVICS CHARTER SCHOOL,**

Respondents.

Robert A. Robinson, Esq., for petitioner (Disability Rights New Jersey, attorneys)

Elesia James, Esq., for respondent Trenton Public School District Board of
Education

Andrew W. Li., Esq., for respondent Trenton Stem-to-Civics Charter School
(Comegno Law Group, P.C., attorneys)

BEFORE **GAURI SHIRALI SHAH, ALJ:**

STATEMENT OF THE CASE

Petitioner S.M. transferred high school senior D.M. from respondent Trenton Stem-to-Civics Charter School (charter school) to Trenton Public School District (Trenton) with an in-place individual education plan (IEP) seeking placement in a transition program for 18-to-21-year-olds but Trenton instead designed a new IEP spanning the last three school days, and purported to graduate D.M. Is the Trenton graduation and IEP effective where petitioner timely objected to them? No. A timely filed due process petition invokes the stay-put provisions of 20 U.S.C. 1415(e)(3) which create an automatic preliminary injunction that maintain the current existing placement pending final resolution of the petition. See Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996).

PROCEDURAL HISTORY

On June 3, 2024, D.M. transferred from the charter school to the Trenton school district. On June 21, 2024, respondent Trenton school district held an IEP meeting that resulted in a new IEP that ran from June 21, 2024 to June 25, 2024, and under which they sought to graduate D.M. on June 25, 2024. Petitioner filed a due process petition challenging the IEP on July 2, 2024. The Department of Education, Office of Special Education (OSE), received the due process petition on July 2, 2024, and is currently scheduled for a mediation on September 11, 2024.

On August 19, 2024, petitioner filed this emergent relief application with OSE seeking to enforce their stay-put rights to prevent the graduation of D.M. by Trenton. OSE transmitted the application to the OAL on the same day where it was filed as an emergent contested case. Oral argument was scheduled for August 28, 2024, but due to the unavailability of the charter school's counsel, was rescheduled for September 6, 2024, with the consent of the parties.

On September 6, 2024, I heard oral argument from counsel for all parties and accepted all remaining submissions from the parties.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for stay put **FIND** the following as **FACT**:

D.M. has multiple disabilities and was eligible for special education services under the Individuals with Disabilities Education Act (IDEA). As such, he had an IEP during his high school years. S.M. and D.M. reside within the Trenton school district. D.M. attended the charter school from sophomore year of high school through May 16, 2024, his last day at the charter school.

On June 3, 2024, S.M registered D.M. as a student at Trenton. S.M. transferred D.M. to Trenton based on guidance from the charter school. Specifically, during the 2023-24 school year, S.M. concluded that D.M. needed additional educational services, specifically transition services and an 18-to-21-year-old program for D.M. to assist him with becoming a self-sufficient adult and informed the charter school of her concerns. The charter school advised they did not offer such a program but that Trenton did and they would be available to D.M. if she were to enroll her son in Trenton. This guidance led S.M. to withdraw D.M. from the charter school and register D.M. at Trenton. Trenton does offer in-house, 18-to-21 programs.

While attending the charter school, D.M. had an IEP that ran from January 2, 2024 through January 1, 2025 (January 2024 IEP). Respondent Exhibit 2. Another IEP meeting was held by the charter school on April 25, 2024, to address S.M.'s concerns about the transition services and that resulted in the April 25, 2024, IEP which ran through April 25, 2025 (April 2024 IEP). Petitioner Exhibit C. The April 2024 IEP was signed by S.M. on May 17, 2024. The main difference between the two charter school IEPs is reflected in classroom placement and in the "Student's Desired Post Secondary Outcomes (Future Visions)" sections. The January 2024 IEP specifies placement as 80% or more in presence of regular education students. Resp. Trenton Exhibit 2. In contrast, the April 2024 IEP specifies placement should be less than 40% in presence of regular education students. Pet. Exhibit C. Additionally, the April 2024 IEP requires self-contained classroom for mathematics, language arts and science; the January 2024 IEP

requires in class supports. The charter school does not have self-contained classrooms, thus D.M. was not in self-contained classroom as specified in the April 2024 IEP at the time he transferred to Trenton.

With regard to the “Future Visions” section, the language in both IEPs is identical and reflect that D.M. plans to attend the College of New Jersey for the Career and Community Studies Program. However, the April 2024 IEP adds “ after completing a 18-21 year old transition program at YALE school.” Both the January 2024 and April 2024 IEPs reflect that transition planning has been ongoing and implemented in September 2023.

Trenton accepted and completed D.M.’s June 3, 2024 registration. Thereafter, on June 17, 2024, Trenton sought D.M.’s school records and two prior IEPs from the charter school. Resp. Trenton Exhibit 2. The charter school provided the requested records on June 18, 2024. Ibid. An IEP meeting was scheduled by Trenton for Friday, June 21, 2024, and resulted in an IEP of that same date (Trenton IEP). See Pet. Exhibit B. The purpose of the IEP meeting was listed as “Exit/Graduation meeting.” The IEP duration was to be from June 21, 2024 through June 25, 2025. Of the three school days this encompassed (including the day of the IEP meeting), two days were slated for Trenton’s graduation days.

The Trenton IEP relies mostly on the results of testing done in December 2023 for the January 2024 IEP. Pet. Exhibit B. However, the Trenton IEP does reference and rely on the April 2024 IEP in certain sections including “Related Strategies and/or Activities” and “Pre-employment Transition Services.” Trenton determined in the IEP that no further educational services including a transition program (the 18 to 21 program) was required and that D.M. had met State graduation requirements. Ibid.

S.M.’s current and prior requests for “an out-of-district transition program and additional time for transition purposes” were considered and rejected by Trenton. However, a referral to the Mercer County Community College Center for Adult Transition Program was recommended. The Trenton IEP specifically noted that the IEP was recommending a change in placement: graduation.

S.M. disagreed with the terms of the Trenton IEP—including graduation. She refused to sign the IEP or acknowledge the copy offered by Trenton. Trenton unsuccessfully attempted to forward a copy of the IEP by email but eventually placed it in the mail. On June 25, 2024, S.M. received a copy of the final draft of the Trenton IEP and a Notice of Graduation, both dated June 21, 2024. The Notice of Graduation specifically notes that S.M. had the right to review and consider the decision to graduate—and that she had fifteen days to do so:

“You have the right to review and consider this decision. However, the determination that D.M. will graduate will become effective 15 days after you received this notice unless you initiate mediation or a due process hearing to dispute this decision.” Pet. Exhibit D.

D.M. did not attend or otherwise participate in the Trenton graduation held on June 24, 2024. On July 2, 2024, S.M. filed for a due process hearing challenging the Notice of Graduation and the Trenton IEP. On August 7, 2024, Trenton emailed and sent via regular mail, D.M.’s diploma of graduation to S.M. advising that he was graduated on June 24, 2024. Petitioner filed this emergent hearing application on August 19, 2024.

LEGAL ANALYSIS

Petitioner, though this emergent application, seeks an Order to enforce their right to stay-put of the prevent the graduation of D.M. by Trenton.

In special education matters, emergent relief shall only be requested for the following issues:

- 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.

[N.J.A.C. 6A:14-2.7(r)(1).]

Here, the petitioner seeks emergent relief relating to graduation and specifically, halting graduation of D.M. by the Board pending the outcome of the underlying due process proceeding. However, graduation is also a change in placement, as the parties acknowledge. Thus, the emergent hearing also touches upon a change in placement fueled by the Trenton IEP, for which the petitioner timely filed for a due process hearing.

New Jersey regulations also establish procedural safeguards to prevent the arbitrary change of a student's placement absent notice and consent. N.J.A.C. 6A:14-2.3(f)- (h); 2.7(u). Here, the petitioner sought to prevent the implementation of the graduation and the IEP by timely filing for a due process hearing within the fifteen days permitted. Ibid. Once a timely request for due process hearing is filed, stay-put acts as a preliminary injunction that maintains or freezes the status quo under 20 U.S.C. 1415 (e)(3). Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996). Moreover, "a parent may invoke stay-put when the school proposes a change to the child's then-current educational placement." C.H. v. Cape Henlopen Sch. Dist., 606 F.3d 59, 72 (3d Circuit 2010). The student then remains in the then-current educational placement until the due process petition and related proceedings are resolved. As such, I **CONCLUDE** that petitioner is entitled to stay-put in D.M.'s then-current placement until their underlying due process petition is resolved. Since the April 2024 IEP was not implemented prior to leaving the charter school, I **CONCLUDE** that the then-current placement is based on the January 2024 IEP.

Trenton argues that petitioner is not eligible for the relief sought because D.M. graduated before S.M. filed. In support of its position, Trenton relies on N.J.A.C.16A-14.11, which identifies graduation as a change in placement and states that a parent *may* resolve a disagreement with the proposal to graduate the student by requesting mediation or a due process hearing prior to graduation. N.J.A.C 16A:14.11(b) (emphasis added). However, the district board of education is also required to provide notice to the parent in

accordance with the provisions of N.J.A.C. 6A:14-2.3, which requires that the district provide fifteen-days' notice prior to the implementation of a proposed action so that the parent may consider the proposal. N.J.A.C 6A:-2.3 (h)2. Additionally, the district shall only implement the proposal if the parent consents or if the fifteen days have passed without the parents filing a due process petition challenging the proposal. Ibid. Trenton argues that providing a Notice of Graduation and IEP to petitioner on Friday, June 21, 2024, is enough notice for them to have filed for an emergent application to stop graduation on Monday, June 24, 2024, and that by not doing so, petitioner lost their opportunity to stop graduation. Trenton also argues that the Trenton IEP expired on June 25, 2024, asserting that petitioner is out of time to challenge it. This can be best described as a circular argument and one that lacks merit. Creating a three-day IEP, "graduating" D.M. within those three days, and sending a diploma while a due process petition is pending does not erase the rights of the petitioner to challenge those actions. I **CONCLUDE** that Trenton did not provide the full fifteen days required to petitioner, and thus Trenton could not implement the proposed action: the graduation and the IEP. I **FURTHER CONCLUDE** that petitioner timely challenged the Notice of Graduation and Trenton IEP and is entitled to stay-put under the prior IEP from the charter school pending the resolution of the due process petition and any subsequent appeals.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner's application for emergent relief seeking stay-put and to forestall the graduation of D.M. by Trenton and rescind the diploma issued to D.M., pending resolution of the underlying due process petition is **GRANTED**. I **FURTHER ORDER** the parties to schedule a new IEP meeting to implement the then-current placement and transition services, as required, for D.M.

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).

September 9, 2024

DATE

A handwritten signature in blue ink, reading "Gauri Shirali Shah", is written over a horizontal line.

GAURI SHIRALI SHAH, ALJ

Date Received at Agency:

Date emailed to Parties:

GSS/nn/lam

APPENDIX

EXHIBITS

For Petitioner

Exhibit A	Stem-to-Civics Charter School IEP, dated April 25, 2024
Exhibit B	Email exchange dated, May 31, 2024
Exhibit C	Trenton Public School IEP, dated June 21, 2024
Exhibit D	Notice of Graduation, dated June 21, 2024
Exhibit E	Petitioner's due process petition, dated July 2, 2024
Exhibit F	New Jersey OSE acknowledgement, dated July 3, 2024
Exhibit G	Copy of Order Granting Emergent Relief, OAL Dkt. No EDS 15584-12
Exhibit H	Copy of Order Denying Motions, OAL Dkt. No EDS 07956-10

For Respondent, Trenton Public School BOE

Exhibit A	Email from Trenton to S.M. with delivery failure notification, dated June 21, 2024
Exhibit B	Trenton Public School District completed registration form for D.M.
Exhibit C	Trenton Public Schools 2023–2024 calendar
Exhibit D	Email from Trenton dated August 7, 2024 with copy of diploma for D.M.
Exhibit E	High School Transcript for D.M.
Exhibit F	General Release of Information form completed for D.M.
Exhibit G	Petitioner's Independent Evaluation Request, dated July 9, 2024
Exhibit H	Trenton Public School IEP, dated June 21, 2024
Exhibit I	Email exchanges between petitioner's counsel and Trenton Public School BOE counsel
Exhibit 1	Student Transfer Card
Exhibit 2	Email exchange between Trenton Public School and Stem-to-Civics Charter School and attached student transcript, January 2, 2024 IEP and June 23, 2023 IEP

For Respondent Stem-to-Civics Charter School

None