



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

EMERGENT RELIEF

OAL DKT. NO. EDS 12039-18

AGENCY DKT.NO. 2019-28655

C.K. ON BEHALF OF J.K.,

Petitioner,

v.

**MONTAGUE BOARD OF EDUCATION,
HIGH POINT REGIONAL HIGH SCHOOL
BOARD OF EDUCATION, AND WINDSOR
SCHOOL,**

Respondent.

Petitioner C.K. o/b/o J.K. pro se

Alexandra Stulpin, Esq. for respondent Montague Board of Education (Comegno Law Group, attorneys)

Elizabeth Murphy, Esq., for respondent High Point Regional High School Board of Education (Busch Law Group, attorneys)

Janelle Edwards-Stewart, Esq., for respondent Windsor School (Porzio, Bromberg & Newman, attorneys)

Record Closed: August 28, 2018

Decided: August 28, 2018

BEFORE **GAIL M. COOKSON**, ALJ:

Petitioner C.K. filed this petition on August 20, 2018, on behalf of her son J.K., who is seventeen years old, requesting an emergency hearing, specifically for an order requiring that his current out-of-district placement at The Windsor School (Windsor) continue because it is the only valid placement in place currently for him. It is not disputed that J.K. is entitled to special educational services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §1400 et seq., as a child classified as emotionally disturbed.

The Office of Special Education Programs (OSEP) transmitted the emergency petition to the Office of Administrative Law (OAL) on August 21, 2018. On August 28, 2018, oral argument was heard and the record for the emergent application only closed. For the reasons set forth on the record and after due consideration of any papers received, and oral argument, I **CONCLUDE** that petitioner's request for emergent relief must be **GRANTED**.

The only facts that are cognizable in this proceeding as set forth in the papers submitted are procedural ones. On May 7, 2018, all of the parties here were present at an IEP meeting which determined that J.K. would remain at Windsor for the 2018-2019 school year. Between May 7 and August 20, Windsor sent a tuition contract to High Point (June 27), then attempted to withdraw and revoke that contract as well as the offer of a placement at Windsor for J.K. starting in September 2018 (July 24). High Point received that very brief July 24 letter setting forth that statement of revocation. The only action High Point took was to advise petitioner on August 7 that she could either file for due process and emergent relief or ask High Point to convene another IEP meeting to determine a different placement. As stated, petitioner filed for emergent relief on August 20.

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. Dis't 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]

While counsel have submitted briefs on this emergent application¹, and while Windsor's counsel attempted to "clean up" the record with another more formal letter on August 21, 2018, to counsel for High Point reiterating that Windsor was terminating J.K.'s placement, there has been no properly convened procedures under the IDEA that would trump the current IEP for this student. Nor are there before me any competent allegations² that would indicate that the Windsor placement is so inappropriate as to trump the IDEA's presumption of "stay put."

¹ It is noted that both High Point and Motague argue that Windsor is still the appropriate placement for J.K.

² It is noted that Windsor's counsel argued in its brief filed this date without any factual support, and apparently for the first time, that J.K. had "numerous behavioral issues," was popular and a bad influence type of "ringleader," none of this is properly before me and none of this has been properly vetted by the parties.

“Stay put” controls here because J.K. has been a student at Windsor last school year with an operative IEP from High Point which continues that placement for the 2018-2019 school year. Unless and until High Point establishes a new IEP for J.K. that does not include placement at Windsor, from which petitioner would have another due process and emergent relief opportunity, Windsor must abide by the placement.

ACCORDINGLY, it is on this 28th day of August 2018, **ORDERED** that petitioner’s application for emergent relief in the form of a stay put for J.K. at Windsor is and the same is hereby **GRANTED**.

This decision on application for emergency relief resolves all of the issues raised in the due process complaint; therefore, no further proceedings in this matter are necessary. This decision on application for emergency relief is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2). 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.

August 28, 2018

DATE



GAIL M. COOKSON, ALJ

Date Received at Agency

8/28/18

Date Mailed to Parties:

8/28/18

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