



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

**FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 05295-23

AGENCY DKT. NO. 2023-35999

**R.B.,**

Petitioner,

v.

**TOMS RIVER REGIONAL BOARD  
OF EDUCATION,**

Respondent.

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**Hasibul Haque, Esq.,** for petitioner (Community Health Law Project, attorneys)

**R. Taylor Ruilova, Esq.,** for respondent (Comegno Law Group, attorneys)

Record Closed: June 27, 2023

Decided: June 28, 2023

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

**STATEMENT OF THE CASE**

Petitioner, R.B., age nineteen, filed a petition for emergent relief against the respondent, Toms River Regional Board of Education seeking an order preventing the respondent from graduating him and seeking a determination that the Y.A.L.E. School is the “stay put” placement pending the due process proceeding.

## **PROCEDURAL HISTORY**

Petitioner, an adult student, filed a request for mediation with the Office of Special Education (OSE) on April 6, 2023, following a March 24, 2023, meeting with the District wherein the District advised that R.B. would be graduating in June 2023, before the age of twenty-one. Petitioner objected to this decision stating R.B. has not met his IEP goals for the 2022–2023 school year. On June 8, 2023, following unsuccessful mediation, this matter was converted to a request for due process. Petitioner filed an application for emergent relief with OSE on June 15, 2023, together with a certification of counsel in support of same with attached exhibits A through E. The emergent petition seeks an order preventing the District from graduating the student and for “stay put,” continuing the student’s placement at the Y.A.L.E. School program pending the outcome of the due process proceeding. The due process petition seeks to continue R.B.’s placement at the Y.A.L.E. School to work on goals not yet completed and to prevent the District from graduating him. The emergent petition alone was transmitted to the Office of Administrative Law (OAL) on June 19, 2023, where it was filed 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 June 26, 2023, letter brief in opposition, together with a certification from Joy Forrest, Director of Special Services for respondent, with attached exhibits A through I, all of which were considered with this emergent application.

The parties presented oral argument on the emergent relief application on June 27, 2023, via Zoom audio/video technology and the record closed.

## **FACTUAL DISCUSSIONS**

### **For petitioner**

R.B., nineteen years old, is eligible for special education and related services under the category “Other Health Impaired” (OHI). He has been diagnosed with Attention Deficit Hyperactivity Disorder, Autism Spectrum Disorder, and bipolar disorder. Petitioner was placed at the private day program for students with disabilities at the Y.A.L.E. School in Cherry Hill, New Jersey, for education and related services including an Extended School Year (ESY), pursuant to a May 12, 2022, IEP. On March 24, 2023, petitioner was notified that respondent would be graduating him in June 2023 and provided him with a notice of intent to graduate on March 28, 2023. Petitioner objected to this decision and filed for mediation on April 6, 2023, which was had on May 31, 2023, but was unsuccessful and petitioner requested the matter be converted to a due process complaint. Because the matter is currently in due process, petitioner has filed for emergent relief requesting that the “stay put” provisions of the IDEA be enforced and that R.B. remain at his current educational placement at the Y.A.L.E. School, beginning with the 2023 ESY program through the pendency of the due process proceedings.

Petitioner submits that he has not met the goals set forth in the May 12, 2022, IEP as far as transitional goals for independent living, including financial literacy and money management. Petitioner has not been paying his bills and has defaulted on his credit card. He would like to continue at the Y.A.L.E. School to meet these goals. He is entitled to stay put at the Y.A.L.E. School, pending the outcome of the due process proceedings.

### **For respondent**

Respondent submits that R.B. is a success story. He has done extremely well and has satisfied all of his graduation requirements and made substantial progress on all of his IEP goals. He has a full-scale IQ score of 124, placing him in the 95% compared to his peers. He would have been eligible to graduate two years ago, in June 2021 after having completed his twelfth-grade year at Y.A.L.E., but when the District reached out to the parent to discuss graduation, the parent stated that R.B. was not ready. The District

agreed to provide another year of programming at Y.A.L.E. for the 2021–2022 school year in the Y.A.L.E. S9 program to work towards transition goals and life skills. At the end of the 2022 school year, the parties again discussed R.B.’s graduation.

On May 12, 2022, an IEP meeting was conducted wherein the District shared their position that R.B. had mastered his IEP goals, met his graduation requirements and was eligible to graduate. Parent K.B. responded that she did not believe R.B. was ready to graduate and requested that he be provided with a program to incorporate a few additional transitional goals. The IEP team accepted the parent’s request and agreed that R.B. would continue for an additional year at Y.A.L.E. to work on transitional skills. The May 12, 2022, IEP stated that they considered graduating R.B. at the conclusion of the 2021–2022 school year, however the IEP team determined that there were a few transitional goals, specifically financial, that R.B. had not yet achieved. Additionally, the IEP team added some independent living programming and goals for the 2022–2023 school year.

The District maintains that everyone understood that R.B. would graduate at the end of this school year. R.B. lives on his own independently in an apartment on his family’s property. He has worked at Stop and Shop for one and a half years. His parent refuses to transition him to adult services through the Division of Vocational Rehabilitation Services (DVR) and seeks to continue him in secondary school when his needs do not warrant it. His credit card debt is not something that requires special education.

Respondent further argues that if stay put is granted, it should not be at the out-of-district placement at the Y.A.L.E. School, but should be within district, in the District’s eighteen through twenty-one-year-old program.

### Discussion

Petitioner claims R.B. has not met his IEP goals set forth in the May 12, 2022 IEP and should not be graduated. Respondent claims that he has met all his goals and should be graduated. These issues and whether or not R.B. has been provided with F.A.P.E. require a plenary due process hearing with testimonial and documentary evidence and is not the subject of this emergent application. For purposes of this emergent application,

both parties agree that the May 12, 2022, IEP was the last agreed upon educational placement for R.B. which placed him at the private day program for students with disabilities at the Y.A.L.E. School in Cherry Hill, for education and related services including ESY.

### **LEGAL ANALYSIS AND CONCLUSION**

This case arises under the Individuals with Disabilities Education Act, 20 U.S.C.A. §§ 1400 to 1482. One purpose of the Act, among others, is to ensure that all children with disabilities have available to them a “free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C.A. § 1400(d)(1)(A). This “free appropriate public education” is known as FAPE. In short, the Act defines FAPE as special education and related services provided in conformity with the IEP. See 20 U.S.C.A. § 1401(9). A FAPE and related services must be provided to all students with disabilities from age three through twenty-one. N.J.A.C. 6A:14-1.1(d).

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, petitioner asserts that he is entitled to emergency relief because the contested matter involves issues concerning placement pending the outcome of the due process proceedings and issues involving graduation. Petitioner contends that R.B. should remain at the Y.A.L.E. School, pending the outcome of the underlying due process proceeding, since the last agreed upon placement was the Y.A.L.E. School as set forth in the May 12, 2022, IEP, which both parties agree is the operative IEP.

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 is not an issue in this case.

The last agreed upon educational placement for R.B. is the contracted private placement at the Y.A.L.E. School. 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 will 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

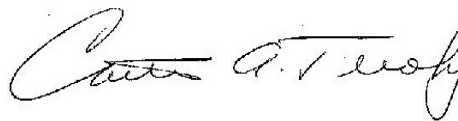
educational placement “during the pendency of any administrative or judicial proceeding regarding a due process complaint.” 34 C.F.R. § 300.518(a) (2016); N.J.A.C. 6A:14-2.7(u).

Therefore, for the foregoing reasons, I **CONCLUDE** that petitioner is entitled to the emergent relief requested and that R.B. will not be graduated by the District and his “stay put” placement is at the Y.A.L.E. School as set forth in the May 12, 2022, IEP, unless the parties otherwise agree to a change in placement.

**ORDER**

It is **ORDERED** that the petitioner’s 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 parent and adult student, 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.



June 28, 2023

DATE

CATHERINE A. TUOHY, ALJ

Date Received at Agency:

Date Mailed to Parties:

CAT/gd