State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION ON
EMERGENT RELIEF
OAL DKT. NO. EDS 11869-24
AGENCY DKT. NO. 2025-38084

D.B. AND G.L. ON BEHALF OF J.B.,
Petitioner,
v.
MONTCLAIR TOWN
BOARD OF EDUCTION,
Respondent.

Julie Warshaw, Esq., for petitioners (Warshaw Law Firm, LLC, attorneys)

Katherine A. Gilfillan, Esq., for respondent (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: September 3, 2024 Decided: September 4, 2024

BEFORE **BINDI MERCHANT**, ALJ**:**

STATEMENT OF THE CASE

On July 16, 2024, the parties agreed to an Individualized Education Program (IEP) placing J.B. at Renaissance at Rand Middle School for the start of the school year on September 5, 2024. Petitioners filed for stay put before the start of the school year. Is

Renaissance the stay put placement? No. Stay put is the last agreed upon placement functioning at the time of the controversy. Drinker v. Colonial Sch. Dist., 78 F.3d 859 (3rd Cir. 1996).

PROCEDURAL HISTORY

On August 26, 2024, petitioners filed a Request for Emergent Relief with the Office of Special Education (OSE). The matter was transmitted to the Office of Administrative Law on August 27, 2024. N.J.S.A. 52:14F-5(e), (f), and (g) and N.J.A.C. 1:6A-1 through 18.5. Oral arguments were held on September 3, 2022, and the record was closed on that date.

FINDINGS OF FACT

I **FIND** the following **FACTS** based on the documents received for the application for emergent relief:

J.B. is an eleven-year-old, rising sixth grader, in Montclair, New Jersey.

J.B. was originally found eligible for special education services in January 2018. He had an individualized education program (IEP) until January 2022 under the classification of Other Health Impaired. His diagnosis included Attention Deficit Hyperactivity Disorder (ADHD), combined type, and Generalized Anxiety Disorder.

J.B. was declassified for the 2022-2023 and 2023-2024 school year. The petitioner was informed about the declassification on February 10, 2023. Thereafter, J.B. was provided with a 504 plan where he struggled academically and emotionally. On March 20, 2024, a request was made for a reassessment of J.B. for an IEP. Respondent agreed to evaluate J.B. and evaluations took place between May and July 2024.

In the interim, petitioners were required to select a middle school placement for J.B. with only a 504 in place. There are three middle schools in the Montclair Public School District (Buzz Aldrin, Glenfield, and Renaissance). The petitioners selected Buzz Aldrin after they incorrectly heard at an open house that Renaissance does not support students with IEPs. On June 15, 2024, respondent formally placed J.B. at Buzz Aldrin. Upon learning that Renaissance took children with IEPs, petitioners requested that the child study team (CST) consider whether J.B. would be best served with a placement at Renaissance.

After the reassessment was completed, an updated IEP was provided on July 16, 2024 under the classification of Other Health Impaired with a diagnosis of ADHD and Generalized Anxiety Disorder. The IEP identified J.B.'s school as Renaissance. Under the IEP, J.B. would be placed in an In-Class Resource setting for English/Language Arts, Math, Science and Social Studies, and a Pull-Out Resource Replacement for Study Skills and receive individual weekly counseling. Notably, the IEP states, "the parents and CST feel that [J.B.] would be better placed at Renaissance, his feeder middle school. Since touring Buzz, concerns of transitioning to a larger school without his friend group has been considered as overwhelming and Renaissance size, programming, and supports would be in his best interest. Opportunities to increase independence and responsibility including walking to and from school due to proximity." (P-1)

Petitioners returned the signed IEP on July 18, 2024 to respondent and made contact about placing J.B. at Renaissance. (P-2) Respondent had already assigned students, including J.B., to the various middle schools. (Certification of Dr. Trim) Additionally, the In-Class resource classes that J.B. required were already filled at Renaissance. J.B. would receive the same educational program at Buzz Aldrin as he would at Renaissance. The primary difference between the two schools are their size (Renaissance has 200 students versus Buzz Aldrin has 600 students), J.B.'s ability to walk to Renaissance versus using a bus for Buzz Aldrin and his familiarity of peers at Renaissance.

CONCLUSIONS OF LAW

N.J.A.C. 1:6A-12.1(a) provides that the affected parent may apply in writing for emergent relief. An emergent 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.

Emergent relief shall only be requested for specific issues, namely i) issues involving a break in the delivery of services; ii) issues involving disciplinary action, including alternate educational settings; iii) issues concerning placement pending the outcome of due process proceedings; and iv) issues involving graduation. N.J.A.C. 6A:14-2.7(r). Here, petitioners have requested that Renaissance be considered the "stay-put" placement for the upcoming school year that starts tomorrow on September 5, 2024, during the pendency of the due process proceedings.

The standards for emergent relief are set forth in Crowe v. DeGioia, 90 N.J. 126 (1982), and are codified at N.J.A.C. 6A:3-1.6. The petitioners bear the burden of proving:

1. that the party seeking emergent relief will suffer irreparable harm if the requested relief is not granted;

2. the existence of a settled legal right underlying the petitioner's claim;

3. that the party seeking emergent relief has a likelihood of prevailing on the merits of the underlying claim; and

4. when the equities and the interests of the parties are balanced, the party seeking emergent relief will suffer greater harm than the respondent.

[Crowe, 90 N.J. at 132-34.]

The petitioner must establish all the above requirements in order to warrant relief in their favor and must prove each of these Crowe elements "clearly and convincingly." Waste Mgmt. of N.J. v. Union Cnty. Utils. Auth., 399 N.J. Super. 508, 520 (App. Div. 2008); D.I. and S.I. on behalf of T.I. v. Monroe Township Board of Education, 2017 N.J. Agen LEXIS 814, 7 (OAL Dkt No. EDS 10816-17, October 25, 2017). Petitioners have not provided evidence of irreparable harm because J.B. will receive the educational program required by the IEP.

Here, petitioners contend that they are invoking the "stay put" provision to require the Board to place J.B. at Renaissance. With a "stay put" claim, the petitioners are seeking an automatic statutory injunction against any effort to change J.B.'s placement and program at the time the provision is invoked. Drinker by Drinker v. Colonial School Dist., 78 F.3d 859, 864 (3d Cir. 1996). Under N.J.A.C. 6A:14-2.7(u):

> 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 between the district board of education and the parents for the remainder of any court proceedings. [Emphasis added.]

The "stay-put" provision acts as an automatic preliminary injunction, the overarching purpose of which is to prevent a school district from unilaterally changing a disabled student's placement or program. See Drinker, 78 F.3d at 864. In terms of the applicable standard of review, the emergent relief factors set forth in N.J.A.C. 6A:14-2.7(r)-(s), N.J.A.C. 1:6A-12.1, and Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982), are generally inapplicable to enforce the "stay-put" provision. As stated in Pardini v. Allegheny Intermediate Unit, 429 F.3d 181, 188 (3d Cir. 2005), "Congress has already balanced the competing harms as well as the competing equities."

In Drinker, the court explained:

> The [IDEA] substitutes an absolute rule in favor of the status quo for the court's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a . . . balance of hardships.
>
> [78 F.3d at 864 (citations and internal quotations marks omitted).]

In other words, in cases where the "stay-put" provision applies, injunctive relief is available without the traditional showing of irreparable harm. Ringwood Bd. Of Educ. v. K.H.J. o/b/o K.F.J., 469 F. Supp. 2d 267 (D.N.J. 2006). Under those circumstances, it becomes the duty of the court to ascertain and enforce the "then-current educational placement" of the handicapped student. Drinker, 78 F.3d at 865. "[T]he dispositive factor in deciding a child's 'current educational placement' should be the individualized education program . . . *actually functioning* when the 'stay put' is invoked." Id. at 867, quoting Woods v. N.J. Dept. of Ed., No. 93-5123, 20 Indiv. Disabilities Educ. L. Rep. (LRP Publications) 439, 440, 3rd Cir. September 17, 1993.

Here, the last agreed upon IEP is dated July 16, 2024. The controversy stems from the petitioners' belief that "stay put" mandates that J.B. be placed at Renaissance while Respondent maintains that because J.B. is already assigned to Buzz and since there is no difference between the program offered at two schools, J.B. is required to attend Buzz. However, neither of these schools were actually functioning at the time of the dispute.

While the assignment of a particular school or classroom may be an administrative determination, the determination should be consistent with the placement team's decision. Letter to Paul Veazey (U.S. Dept of Education, Office of Special Education and Rehabilitative Services, Nov. 26, 2001). Respondent argues that its CST does not have authority to determine a placement for J.B. Nevertheless, the CST chose Renaissance as the appropriate placement for J.B.

The CST is responsible for developing, monitoring and evaluating J.B.'s IEP. Lascari v. Board of Education, 116 N.J. 30, 35 (1989). Under N.J.A.C. 6A:14-3.1, the

CST is responsible for identification, evaluation, determination of eligibility, development and review of the IEP, and placement. While the "brick and mortar" of a school is generally not considered in an IEP by the CST, here the CST identified Renaissance as the better fit for J.B. because it has less students, a smaller building for him to navigate, familiar peers, and develop independence by being able to walk to school. However, respondent argues that when CST recommended Renaissance the program was already full.

Based upon the foregoing I **CONCLUDE** that petitioner's request for emergent relief under stay put should be **DENIED** because there is no actually functioning placement.

ORDER

Accordingly, I **ORDER** that the petitioner's application for emergent relief is **DENIED**. I **FURTHER ORDER** that the parties convene an immediate IEP meeting to discern the appropriate school placement now that Renaissance is unavailable.

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 4, 2024
DATE

BINDI MERCHANT, ALJ

Date Received at Agency:

Date Mailed to Parties:

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APPENDIX

EXHIBITS

For petitioner:

P-1 IEP dated July 16, 2024

P-2 Consent form to implement July 16, 2024 IEP

For respondent:

Certification of Dr. Shivoyne Trim

R-1 Evaluations between May – June 2024