



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENCY RELIEF

OAL DKT. NO. EDS 07069-25

AGENCY DKT. NO. 2025-38995

A.D. ON BEHALF OF T.D.,

Petitioners,

v.

SAYREVILLE BORO

BOARD OF EDUCATION

Respondent.

Ruby Kish, Esq., for petitioner (Disability Rights New Jersey, attorneys)

Mark G. Mucciolo, Esq., for respondent (Busch Law Group, P.C., attorneys)

BEFORE, **GAURI SHIRALI SHAH, ALJ**:

STATEMENT OF THE CASE

T.D. was serving a ten-day suspension during which he was being provided at-home instruction when respondent school proposed a new Individualized Education Program (IEP) for continued home instruction pending an out-of-district (OOD) placement, which petitioner A.D. challenged with a timely filed due process petition. At the end of the suspension period, respondent refused to allow T.D. to return to school under his prior IEP, asserting that at-home instruction was the last educational placement

for stay-put. Is the at-home instruction offered during the suspension the current educational placement for stay-put pending the outcome of the due process petition? No. A student's current educational placement is the IEP in place when the 'stay-put' is invoked. See Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996).

PROCEDURAL HISTORY

On April 3, 2025, Sayreville War Memorial High School (SWMHS or the school) suspended petitioner T.D. for two days for a cell phone incident that violated the school's technology policy. On April 4, 2025, the suspension was extended to ten days after the school determined that T.D.'s actions violated a behavior contract he had entered into with the school. During the suspension period, the school offered at-home instruction to T.D. Prior to the suspension, T.D., a student with a disability, had been receiving general education with pull-out resource classes under a January 28, 2025 Individualized Education Program (IEP). The suspension ended on April 24, 2025.

On April 9, 2025, during the suspension period, the school held an IEP meeting and proposed a new IEP which recommended that T.D. continue at-home instruction pending an OOD placement. On April 22, 2025, petitioner timely filed a due process petition challenging the proposed April 9, 2025 IEP. The Department of Education, Office of Special Education (OSE), received the due process petition on April 22, 2024, and is case is currently in the thirty-day resolution process.

On April 24, 2025, the suspension period ended but the school refused to permit T.D. to return to school, and the petitioner filed this emergent relief application with OSE seeking an order to return T.D. to school. OSE transmitted the application to the OAL on the same day where it was filed as an emergent contested case.

On May 5, 2025, I heard oral argument from counsel for all parties.

FINDINGS OF FACT

Based on the documents the parties submitted in support of and in opposition to the motion for emergent relief, I **FIND** the following as **FACT**:

T.D. is a sixteen-year-old student attending SWMHS and is eligible for special education services under the classification of “other health impaired.” T.D. had a January 28, 2025 IEP under which he participated in a general education program with pull-out resource classes.

T.D. has a long disciplinary history at SWMHS starting in 2023 that included using racial slurs, the use of profanity against students and teachers, throwing things in class, and disrupting class. On January 23, 2025, T.D. received a forty-five-day suspension after engaging in social media communications with another student that violated the Student Code of Conduct.

On March 10, 2025, the Board held a disciplinary hearing and determined that T.D. could return to school the next day having already served the maximum suspension of forty-five days. On March 11, 2025, T.D. entered into a behavior contract with the school. (R-2). T.D.’s parent also signed the contract as did the school’s principal and vice-principal.

The behavior contract required T. D. to follow all of the rules in the student code of conduct, not disrupt the educational process at the school and not disrespect any staff member or other student. Under the agreed to terms of the behavior contract, a violation by T.D. could result in a recommendation to the Board and Superintendent of Schools for an alternative placement.

On April 3, 2025, T. D. was suspended for two days for an incident in wood shop class involving his use of the cell phone. Thereafter, on April 4, 2025, the suspension was increased to a full ten days as the school determined that T.D.’s actions also violated

the behavior contract. Due to the intervening spring break, the end date for the suspension was April 24, 2025.

On April 9, 2025 during the suspension period, the school held a manifestation determination review meeting (MDR) to determine if T. D.'s behavior was a manifestation of his disability. The school determined that the behavior was not a manifestation of T.D.'s disability. Immediately after the MDR, an IEP meeting was held. The school's Child Study Team (CST) proposed a change in T. D.'s educational placement to at-home instruction pending an OOD placement.

On April 22, 2025, petitioner A.D., T.D.'s parent, timely filed a due process petition to contest the proposed change in placement. On April 24, 2025, at the end of the suspension period, the school would not permit T. D. to return to school. On that same day, petitioner A.D. filed this application emergent relief seeking an order returning T.D. to SWMHS, and to his last agreed to educational placement under the January 28, 2025 IEP of general education with pull-out resource classes.

CONCLUSIONS OF LAW

Petitioner, through this emergent application, seeks an order to return T.D. to school after the end of his ten-day suspension while the due process petition challenging the proposed IEP proceeds.

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 T.D.'s placement pending the outcome of the underlying due process proceeding.

Both federal and New Jersey regulations establish procedural safeguards to prevent the arbitrary change of a student's placement absent notice and consent. 20 U.S.C. § 1415(j); N.J.A.C. 6A:14-2.7(u). Here, the petitioner sought to prevent the implementation of the interim placement in the proposed IEP as well as the OOD sought by respondent by timely filing for a due process hearing. 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.

Both parties disagree what constitutes the current educational placement for T.D. The school asserts that the current educational placement is both procedurally and substantively at-home instruction as that was the "operational placement" at the time of the new April 9, 2025 IEP was proposed and relies on the federal regulations and caselaw to support its position. The school points to the exception to stay-put established in the federal regulations for disciplinary proceedings that permit an interim placement. 20 U.S.C. § 1415 (k)(4). While the school is correct that the federal regulations permit an exception to stay-put for disciplinary actions, the exception first applies to appeals brought under 20 U.S.C. § 1415(k)3, which was not the basis for appeal in this matter, and secondly, the interim placement is time-limited. 20 U.S.C. § 1415 (k) (1)(c). Ostensibly, this limitation reflects the understanding that disciplinary actions other than expulsions, which is not at issue here, are time-limited and may require the school to make

adjustments to how it provides educational services to the student who is not present in school.

The school's reliance on the case law, and specifically, Drinker v. Colonial School Dist., infra, 78 F.3d 859, (3d Cir. 1996) and M.R. v. Ridley Sch. Dist., 744 F.3d 112 (3d Cir. 2014) is similarly misplaced. In Drinker, the Court explained that as the term “current educational placement” is not defined within the IDEA, and that the “the dispositive factor in deciding a child’s ‘current educational placement’ should be the Individualized Education Program [IEP] . . . actually functioning when the ‘stay-put’ is invoked.” Drinker, 78 F.3d at 867 (citing the unpublished Woods ex rel. T.W. v. N.J. Dep’t of Educ., No. 93-5123, 20 DELR 439, 440 (3d Cir. Sept. 17, 1993)). If an IEP has been implemented, then that will be the program that is subject to the stay-put provision. Thomas v. Cincinnati Bd. of Educ. 918 F. 2d 618, 625–26 (6th Cir). In this case, there was a January 28, 2025 IEP that was in place and functioning when T.D. was suspended on April 2, 2025, and that is the stay-put that applies.

It is notable the January 28, 2025, IEP was created and accepted during T.D.’s last forty-five-day suspension, and also that, unlike its current position, the school permitted T.D. to return to that educational placement after the suspension. In this instance, the school cannot use the at-home placement as a stay-put where it was only incidental to the ten-day suspension. Nor can the school convert the at-home placement into a stay-put simply by proposing a new IEP during the time of the suspension. If the school were allowed to do so here, it essentially would create an indefinite suspension for T.D. that countermands the purpose of stay-put—a situation addressed and previously rejected by the Supreme Court. Honig v. Doe, 484 U.S. 305 (1988).

As such, I **CONCLUDE** that petitioner T.D. is entitled to stay-put in his current agreed-to educational placement, which is the January 28, 2025 IEP in place at the time of the ten-day suspension, until the underlying due process petition is resolved.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioner's application for emergent relief is **GRANTED** and petitioner T.D. shall be returned to school, and he shall receive educational services under the agreed-to January 28, 2025 IEP pending the outcome of the due process petition.

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).

May 6, 2025

DATE



GAURI SHIRALI SHAH, ALJ

Date Received at Agency:

Date emailed to Parties:

GSS/nn

APPENDIX

EXHIBITS

For Petitioner:

None

For Respondent:

- R-1 School Disciplinary and Attendance Record for T.D.
- R-2 Behavior contract, dated March 11, 2025