State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER

EMERGENT RELIEF

OAL DKT. NO. EDS 07411-25

AGENCY DKT. NO. 2025-39051

I.B. ON BEHALF OF J.R.,

Petitioner,

v.

FRANKLIN TOWNSHIP

BOARD OF EDUCATION,

Respondent.

George M. Holland, Esq., for petitioners (George M. Holland, attorneys)

Cameron R. Morgan, Esq., for respondent (Cleary, Giacobbe, Alfieri & Jacobs, LLC., attorneys)

BEFORE **KIM C. BELIN,** ALJ**:**

STATEMENT OF THE CASE

The Franklin Township Board of Education (respondent or Board) proposed to immediately eliminate 1:1 nursing services for J.R. Petitioner I.B., grandmother and legal guardian for J.R., seeks an Order Granting Emergent Relief to compel the Board to continue the nursing services under the doctrine of "stay put." Is the petitioner entitled to

stay put? Yes, pursuant to N.J.A.C. 1:6A-12.1(a), N.J.A.C. 6A:14-2.7(u), and 20 U.S.C. § 1415(j) the respondent must continue the nursing services.

PROCEDURAL HISTORY

On April 7, 2025, the petitioner received an individualized education program (IEP) prepared by the respondent which proposed eliminating 1:1 nursing services for J.R. for the remainder of the current school year and continuing into the 2025–26 school year. On April 23, 2025, the New Jersey Department of Education, Office of Special Education, received a request for mediation[1], and on May 2, 2025, the petitioner requested emergent relief pending the outcome of the due process hearing. That matter was transmitted to the Office of Administrative Law, where it was filed on May 2, 2025. N.J.S.A. 52:14F-5(e), (f), and (g); N.J.A.C. 1:6A-1 through -18.5. Oral argument was held and brief testimony was taken at a hearing on May 12, 2025, and the record closed on that date.

FINDINGS OF FACT

A summary of the pertinent evidence presented is as follows, and I **FIND** the following as **FACTS**:

J.R. is a fourteen-year-old eighth-grade male student who attends the Franklin Middle School. He was deemed eligible for special education and related services under the classification of multiple disabilities (MD). I.B. is his grandmother and legal guardian; however, her English is limited. F.M. is J.R.'s aunt, who corresponds with the respondent on behalf of her mother, I.B.

The respondent's child study team issued an IEP dated February 25, 2025, to I.B. on April 7, 2025. Under the proposed IEP, J.R. received instruction in all academic areas in a self-contained multiple disabilities class. (J-1.) In addition, he received occupational and physical therapy and speech as related services. He was also enrolled in the

[1] The respondent asserts that the request for due process was not filed by the petitioner but by J.R.'s nurse. That issue is not before this tribunal and will not be addressed. This matter is solely related to the emergent relief application.

extended-school-year program. (Ibid.) The IEP recommended that these services and the MD classification be continued in the 2025–26 school year. However, the IEP team determined that J.R. no longer needed the 1:1 nurse. (Id. at 21.) Specifically, the IEP stated:

> The original reason that J.R. was provided with a 1:1 nurse was to assist with G-tube feedings during the school day. Such feedings are no longer occurring and J.R. participates in lunch with his peers in the cafeteria, drinking fluids and eating foods that are appropriate for him. Furthermore, in the event that J.R. needs a G-tube feeding during the school day in the future, this can be accommodated in the school nurse's office. Consideration was given to continuing the 1:1 nursing services in school for J.R. but this option was rejected. There is no longer a medical reason that requires J.R. to have a 1:1 nurse in school. . . . All of J.R.'s medical needs can be addressed through the school nurse's office and as a result, a 1:1 nurse is no longer medically appropriate to meet his needs in school.
>
> [Ibid.]

The respondent notified F.M. on April 7, 2025, through email that the IEP would become effective fifteen days after receipt unless she "initiated a resolution session, mediation or a due process hearing to dispute the program." (J-2.)

Eight days after the release of the proposed IEP, J.R.'s pediatric gastroenterologist, Dr. Soula Koniaris, wrote a letter dated April 15, 2025, advocating for the respondent to continue the 1:1 nursing services for J.R. because he had a history of dysphagia[2] and aversion,[3] which necessitated the G-tube. (P-1.) The doctor stated: "He requires skilled monitoring and administration of feeds and medications, as well as immediate intervention in case of dislodgement, aspiration risk, or intolerance." (Ibid.)

[2] "Dysphagia is a medical term for difficulty swallowing. Dysphagia can be a painful condition. In some cases, swallowing is impossible." Mayo Clinic, accessed at https://www.mayoclinic.org/diseases-conditions/dysphagia/symptoms-causes/syc-20372028.

[3] "Feeding aversion is when your child can physically eat but exhibits partial or full feeding refusal." SSMHealth Cardinal Glennon, accessed at https://www.ssmhealth.com/cardinal-glennon/services/pediatric-gastroenterology/feeding-swallowing-disorders.

He also suffers from osteopenia,[4] "which increases the risk of fractures or injury with minimal trauma and requires trained staff for safe mobility assistance." (Ibid.) And sensory integration disorder and developmental delays, "which compound his vulnerability to environmental stimuli, further increasing the need for a consistent and trained individual who can interpret and respond to his cues appropriately and in a timely manner." (Ibid.) Dr. Koniaris concluded:

> without a skilled nurse available to monitor [J.R.'s] complex medical conditions and respond to emergencies, he is at increased risk of aspiration, respiratory distress, seizures, and injury, which could result in hospitalization or worse. In accordance with best practices and ethical standards of care, I medically recommend the continuation of full time, 1:1 skilled nursing support while the patient is at school. . . . [I]t is medically necessary to ensure that he can safely attend school and access his right to education under the Individuals with Disabilities Education Act (IDEA).
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> [Ibid.]

The supervisor for Special Education, Ryan Green, sent an email to F.M. on April 23, 2025, inviting her to a meeting regarding J.R. on April 24, 2025, at 12:30 p.m. (P-2.)

The petitioner requested mediation on April 23, 2025, on the basis that she strongly disagreed with discontinuing the 1:1 nursing services. (J-3.) Instead, she proposed continuing the services for one year and scheduling a future re-evaluation. "This will enable us to assess his progress and determine if any changes to his level of support are warranted." (Ibid.)

J.R. continued to receive 1:1 nursing services on April 23, 2025, through April 25, 2025, and April 28, 2025. The nursing services stopped on April 28, 2025, and the petitioner has kept J.R. at home since that date.

[4] "Osteopenia is a loss of bone density. Having reduced bone density means your bones don't have as much mineral content as they should. This can make them weaker and increase your risk of bone fractures (broken bones)." Cleveland Clinic, accessed at https://my.clevelandclinic.org/health/diseases/21855-osteopenia.

DISCUSSION AND 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, the petitioner has requested emergent relief to maintain 1:1 nursing services for J.R. during the pendency of the due process proceedings. The respondent has recommended that these services cease. Therefore, I **CONCLUDE** that I.B. has established that the issue in this matter concerns a current and potential break in the delivery of supplemental services to J.R.

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 petitioner bears the burden of proving that:

> 1. The petitioner will suffer irreparable harm if the requested relief is not granted;
>
> 2. The legal right underlying petitioner's claim is settled;
>
> 3. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
>
> 4. When the equities and interests of the parties are balanced, the petitioner will suffer greater harm than the respondent will suffer if the requested relief is not granted.
>
> [N.J.A.C. 6A:3-1.6(b).]

The petitioner must establish all the above requirements to warrant relief in her favor and must prove each of these 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. ex rel. T.I. v. Monroe Twp. Bd. of Educ., 2017 N.J. Agen LEXIS 814, *7 (October 25, 2017).

I.B. contends that she is invoking the "stay-put" provision to require the Board to continue to provide 1:1 nursing services to J.R. With a "stay put" claim, the petitioner is seeking an automatic statutory injunction against any effort to change J.R.'s program at the time the provision is invoked. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996). This concept is codified in N.J.A.C. 6A:14-2.7(u), which provides:

> 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 at 20 U.S.C. § 1415(k)4. (See N.J.A.C. 6A:14 Appendix A.)

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, 90 N.J. at 132–34, are generally inapplicable to enforce the "stay-put" provision. As stated in Pardini v. Allegheny Intermediate Unit, 420 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. ex rel. 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. Dep't of Educ., No. 93-5123, 20 Indiv. Disabilities Educ. L. Rep. (LRP Publications) 439, 440 (3d Cir. September 17, 1993)).

Here, the last agreed upon and operative IEP is critical. Prior to February 25, 2025, J.R. received 1:1 nursing services during school. On February 25, 2025, a new IEP was proposed that eliminated these services. It is not factually disputed that the IEP was sent to the petitioner on April 7, 2025, and under N.J.A.C. 6A:14-2.3(h)(3)(ii)(2) the petitioner had fifteen calendar days to review the proposed IEP before it automatically became effective. Thus, by law the petitioner had until April 22, 2025, to object to the IEP by filing for a resolution session, mediation, or due process. The Board contends that the petitioner filed for mediation on the sixteenth day after receiving the IEP, and thus the February IEP that eliminated the 1:1 nursing services was in effect.

The petitioner, however, rejects this rigid calculation and contends that the standard is whether J.R. continued to receive the nursing services when the mediation request was filed. Counsel for the petitioner stated during the hearing that Mr. Green spoke with the petitioner on April 23, 2025, and told her that the nursing services would end on April 25, 2025. In response to this phone call, the petitioner filed for mediation on April 23, 2025, to secure the nursing services while the parties engaged in mediation. Mr. Green later extended the nursing services until April 28, 2025. Therefore, the new IEP had not yet been implemented and J.R. continued to receive the nursing services from the Board on April 23, 2025, April 24, 2025, April 25, 2025, and April 28, 2025. Thus, the petitioner's April 23, 2025, mediation application was timely. Under "stay put," an

application for emergent relief must be granted if the parent files a notice for mediation, resolution session, or due process in a timely manner.

Petitioner's counsel relies upon Drinker, in which the court stated that the stay-put provision was created by Congress to ensure that students with disabilities remained in their "current educational placement" until the dispute about their placement was resolved. 78 F.3d at 865. Counsel stated that "current" meant what services were being provided at the time that the mediation application was filed. In this case, the petitioner asserts that the nursing services were still being provided to J.R. when she filed for mediation and her filing was timely. I agree. It is the operative placement and services actually functioning at the time the mediation application was filed that are determinative. This interpretation does not run afoul of the fifteen-day rule (N.J.A.C. 6A:14-2.4(h)3ii) because the nursing services were still being provided, and the new IEP had not been implemented.

Moreover, the petitioner's counsel asserts that the petitioner supplied medical support from J.R.'s physician in the form of a letter dated April 15, 2025, indicating why a 1:1 nurse was required. This letter explains the safety hazards potentially facing J.R. if the nursing services are terminated.

Accordingly, I **CONCLUDE** that the petitioner filed the mediation application in a timely manner and the 1:1 nursing services are to continue pending the outcome of the due process hearing.

ORDER

Accordingly, I **ORDER** that the petitioner's application for emergent relief is **GRANTED**. The Franklin Township Board of Education is hereby directed to continue to provide the 1:1 nursing services to J.R. in accordance with the IEP in effect prior to February 25, 2025, until the underlying due process petition is adjudicated.

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 14, 2025
DATE

Kim C. Belin
KIM C. BELIN, ALJ

Date Received at Agency: May 14, 2025

Date Mailed to Parties: May 14 2025

KCB/am

APPENDIX

Witnesses

For Petitioners:

Forzana Mohamed

For Respondent:

None

Exhibits

Joint:

J-1 IEP dated February 25, 2025

J-2 Email dated April 7, 2025

J-3 Request for Mediation dated April 23, 2025

For Petitioner:

P-1 Dr. Koniaris's letter dated April 15, 2025

P-2 Email dated April 24, 2025

For Respondent:

None