



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER GRANTING

EMERGENCY RELIEF

OAL DKT. NO. EDS 15087-25

AGENCY DKT. NO. 2026-39675

M.H. AND C.H. ON BEHALF OF S.H.,

Petitioners,

v.

FREEHOLD REGIONAL

BOARD OF EDUCATION,

Respondent.

Jessica Weinberg, Esq., for petitioners (Manes & Weinberg, LLC, attorneys)

John B. Comegno, Esq., for respondent (Comegno Law Group, P.C., attorneys)

BEFORE **MICHAEL R. STANZIONE**, ALJ:

STATEMENT OF THE CASE

S.H.'s previous individualized education program (IEP) with Marlboro Township Public School District (Marlboro) placed him out of district (OOD) at Future Foundations Academy (FFA). Respondent, the Freehold Regional Board of Education (Freehold), proposed a new IEP for in-district placement, which petitioners M.H. and C.H., S.H.'s parents, challenged with a timely filed due process petition. Respondent refused to allow S.H. to return to FFA under his prior IEP, asserting that he is an intrastate transfer student

and they are required to provide a “comparable program to FFA.” Does the stay-put provision apply to the previous placement at FFA pending the outcome of the due process petition? Yes. A student’s current educational placement is the IEP in place when “stay-put” is invoked. See Drinker ex rel. Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996).

PROCEDURAL HISTORY

Petitioners filed a request for mediation dated July 2, 2025, challenging Freehold’s draft IEP dated June 19, 2025 (June 2025 IEP). The June 2025 IEP proposed to place S.H. in an in-district autism program at a location to be determined. Mediation was held on August 20, 2025, and was unsuccessful. The request for mediation was converted to a petition for due process. The underlying due process petition has not been transmitted to the Office of Administrative Law.

The emergency relief application was filed on August 28, 2025. On September 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**:

S.H. is a thirteen-year-old rising ninth-grade student who is eligible for special education services under the classification of autism. S.H. had a previous IEP from Marlboro under which he participated in an OOD placement at FFA. As a rising freshman into Freehold a new IEP was proposed on June 19, 2025, for an in-district program, which the parents did not agree to. S.H. became the responsibility of Freehold on July 1, 2025, and a request for mediation was filed on July 2, 2025, to protect his stay-put rights.

On July 10, 2025, Freehold counsel replied with a response on the stay-put issue. Freehold would not honor it, as they viewed S.H. as an intrastate transfer student under

N.J.A.C. 6A:14-4.1(g). They proclaimed that all they were required to provide was a “comparable program” to FFA’s program.

Petitioners timely filed a due process petition to contest the proposed changes to the IEP and the placement. On August 28, 2025, petitioners, on behalf of S.H., filed this application for emergent relief seeking an order invoking stay-put and keeping S.H. at FFA, his last-agreed-to educational placement under the previous IEP of OOD placement in FFA’s autism program.

CONCLUSIONS OF LAW

Petitioners, through this emergent application, seek an order to return S.H. to his previous OOD placement at FFA under the previously agreed-to IEP.

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, petitioners seek emergent relief relating to S.H.’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, petitioners sought to prevent the

implementation of the interim placement in the proposed IEP by timely filing for a due process hearing. Ibid. Once a timely request for a 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, 78 F.3d at 864. 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 Cir. 2010). The student then remains in the then-current educational placement until the due process petition and related proceedings are resolved.

The parties disagree on whether stay-put applies for S.H. The school asserts that S.H. is an intrastate transfer student under N.J.A.C. 6A:14-4.1(g). The school points to subsection (g)(1) of the regulation, which states:

For a student who transfers from one New Jersey school district to another New Jersey school district, the IEP shall be implemented as written if the parents and district board of education agree. If the appropriate district board of education staff do not agree to implement the current IEP, the district board of education shall conduct all necessary assessments and, within 30 days of the date the student enrolls in the school district, develop and implement a new IEP for the student.

While the school is correct that the New Jersey Administrative Code permits an exception to stay-put for transferring students, the cited and submitted case law, the facts of this case, and the Administrative Code do not support the exception in this case.

When the emergent-relief request seeks stay-put to prevent the school district from making a change in placement from an agreed-upon IEP, the proper standard for relief is the stay-put provision under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq. Drinker, 78 F.3d at 864 (citing Zvi D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982) (stay-put “functions, in essence, as an automatic preliminary injunction”)). The stay-put provision provides 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 shall remain in the then-current educational placement of the child.” 20 U.S.C. § 1415(j).

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child must 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) (2025); N.J.A.C. 6A:14-2.7(u). The provision is an automatic preliminary injunction and waives the need to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits. Drinker, 78 F.3d at 859. The purpose 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).

The school’s reliance on the case law, and, specifically, Drinker, 78 F.3d 859, is misplaced. In Drinker, the court explained that the term “current educational placement” is not defined within the IDEA, and that “the dispositive factor in deciding a child’s ‘current educational placement’ should be the [IEP] . . . actually functioning when the ‘stay-put’ is invoked.” Drinker, 78 F.3d at 867 (quoting the unpublished Woods ex rel. T.W. v. N.J. Dep’t of Educ., No. 93-5123, 20 IDELR 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. 1990). In this case, there was a previously agreed-upon IEP that was in place and functioning, for an extended school year, when S.H. was moved to the Freehold District on July 1, 2025.

In this instance, the school contends that they cannot use the current placement as a stay-put because of the change of sending district. They contend that they have no choice but to propose and implement a new IEP. If the school were allowed to do so here, it essentially would create a unilateral placement for S.H. that revokes 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 S.H. is entitled to stay-put at the last-agreed-to educational placement in the IEP in place at the time he matriculated from the Marlboro Township Public School District to the Freehold Regional Board of Education, until the underlying due process petition is resolved.

ORDER

For the reasons stated above, I hereby **ORDER** that petitioners' application for emergent relief is **GRANTED** and S.H. shall be returned to his out-of-district placement at Future Foundations Academy, with the previously agreed-upon transportation, and shall receive any other educational services specified under the last-agreed-to 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).

September 8, 2025

DATE


MICHAEL R. STANZIONE, ALJ

Date Received at Agency:

September 8, 2025

Date emailed to Parties:

APPENDIX

Exhibits

For Petitioners:

- P-A June 19, 2025, draft IEP
- P-B Email correspondence between Keith T. Campbell, Esq., and Andrew W. Li, Esq., dated July 2, 2025, through July 10, 2025
- P-C Email correspondence between parents and Dr. Jessica Howland, dated July 7, 2025
- P-D Certification of M.H. in support of emergent relief
- P-E Brief in support of emergent relief

For Respondent:

- R-A Certification of Jessica Howland in support of respondent's opposition to petition for due process
- R-B Brief in opposition to the request for emergent relief