



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

ORDER DENYING
EMERGENT RELIEF

OAL DKT. NO. EDS 14054-2026

AGENCY DKT. NO. 2027-41692

L.C. ON BEHALF OF R.A.,

Petitioner,

v.

SPOTSWOOD BORO BOARD OF EDUCATION,

Respondent.

L.C., petitioner, pro se

David B. Rubin, Esq., for respondent (attorney)

BEFORE **DIANE HOAGLAND**, ALJ:

STATEMENT OF THE CASE

On August 24, 2026, L.C. filed a request for due-process hearing, together with a motion for emergency relief, seeking a return of R.A. to school when the IEP actually functioning at that time was the IEP placing R.A. on home instruction pending an out-of-district placement. Must R.A. be returned to school? No. The stay-put IEP is the IEP “actually functioning” when the controversy arose. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 867 (3d Cir. 1996).

PROCEDURAL HISTORY

On May 12, 2026, Spotswood proposed an IEP placing R.A. on home instruction pending an out-of-district placement.

On August 24, 2026, L.C. filed a due process petition, together with a motion for emergent relief, seeking to return R.A. to school.

On August 24, 2026, New Jersey Department of Education, Office of Special Education, transmitted the motion for emergent relief to the Office of Administrative Law as a contested case under N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, for a hearing under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, and the Special Education Program, N.J.A.C. 1:6A-1.1 to -18.5.

On August 24, 2026, Spotswood filed its opposition to the motion for emergent relief.

On August 28, 2026, I held oral argument on the motion for emergent relief.

FINDINGS OF FACT

Based on the papers submitted in support of and in opposition to the motion for emergent relief, I **FIND** the following as **FACT** for purposes of this motion only:

On May 12, 2026, Spotswood proposed an IEP for R.A. with home instruction listed under the placement category and a projected IEP start date of May 12, 2026. Spotswood explained under the notice requirements for the IEP and placement that R.A. would be placed on home instruction while an out-of-district placement was being sought that could better address R.A.'s needs. L.C., the parent of R.A., did not agree to the proposed placement. She did not sign the IEP or file a request for due process hearing to object to the IEP until August 24, 2026. On June 1, 2026, Spotswood sent R.A.'s home instruction schedule to L.C. and on June 9, 2026, home instruction began.

CONCLUSIONS OF LAW

Under N.J.A.C. 1:6A-12.1(a) and N.J.A.C. 6A:14-2.7(r), emergent relief in special education matters can 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.

In matters involving the child's stay put placement, petitioner is not required to show irreparable harm because the stay put provision under the IDEA acts as an automatic preliminary injunction against any attempt to change a student's placement from that which is in effect at the time the parents request their due process hearing. Drinker by Drinker v. Colonial Sch. Dist., 78 F.3d 859, 864-865 (3d Cir. 1996).

The stay-put provision under the IDEA states that, "during the pendency of any proceedings conducted pursuant to this section, unless the State or local education 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 "then-current educational placement" has been defined as the "operative placement actually functioning at the time the dispute first arises. If an IEP has been implemented, then that program's placement will be the one subject to the stay put provision." Drinker, 78 F.3d at 867. Further, "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.

The law regarding the implementation of a student's IEP is governed by N.J.A.C. 6A:14-2.3(h). The regulation provides that if the parent does not file for mediation or due process within fifteen days of the district's notice of the proposed IEP, the district should begin implementing the proposed IEP.

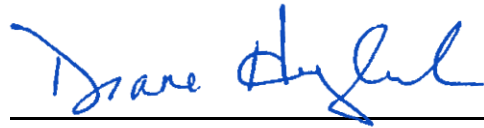
In this case, L.C. argues that she did not agree to the IEP proposed on May 12, 2026, and therefore, Spotswood is R.A.'s stay put placement. L.C., however, did not file for due process within fifteen days of Spotswood's notice, therefore, the IEP proposed on May 12, 2026, became the IEP that was implemented by Spotswood. Further, on June 9, 2026, R.A. began home instruction, therefore, home instruction became the "then-current educational placement" of the student as of June 9, 2026. L.C. also argues that the stay put should be R.A.'s placement at the time Spotswood filed their due process petition on June 5, 2026; however, the dispositive factor in deciding a child's "current educational placement" is the IEP actually functioning when the "stay put" is invoked. L.C. filed her due process petition on August 24, 2026. The "then-current educational placement" at the time L.C. invoked "stay put" was home instruction. Therefore, I CONCLUDE that the May 12, 2026 IEP is the stay put IEP and that R.A. must remain on home instruction pending an out-of-district placement unless the parties agree to change the placement.

ORDER

Given my findings of fact and conclusions of law, I **ORDER** that petitioner's motion for emergent relief is **DENIED**.

August 31, 2026

DATE



DIANE HOAGLAND, ALJ

Date Received at Agency:

August 31, 2026

Date Mailed to Parties:

August 31, 2026

DH/am