



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION GRANTING

EMERGENT RELIEF

OAL DKT. NO. EDS 11640-15

AGENCY DKT. NO. 2015 22955

**P.R. AND C.R. ON BEHALF OF W.R.,
AND W.R. INDIVIDUALLY,**

Petitioners,

v.

**LENAPE REGIONAL
BOARD OF EDUCATION,**

Respondent.

Amelia Carolla, Esq., for petitioners (Reisman, Carolla, Gran, LLP, attorneys)

Kyle Allen, Esq., for respondent (Comegno Law Group, PC, attorneys)

Record Closed: August 19, 2015

Decided: August 20, 2015

BEFORE **JOHN S. KENNEDY, ALJ**:

STATEMENT OF THE CASE

Petitioners request an emergent order to determine the program components to constitute the stay put requirements pending a due process determination. Respondent Lenape Regional Board of Education (Board) opposes this request, contending that

petitioners seek new programing not delineated in W.R.'s Individualized Education Program (IEP).

PROCEDURAL HISTORY

On July 28, 2015, petitioners filed a request for a due process hearing with the Office of Special Education of the New Jersey Department of Education seeking an order that W.R. is not prepared to graduate and should continue at the Y.A.L.E. School (YALE). The Board responded, and seeks an order that W.R. should have graduated in June 2015.

On August 4, 2015, petitioners filed a request for emergency relief seeking an order to determine the program components to constitute the stay put requirements pending a due process determination. The emergent matter was transmitted to the Office of Administrative Law as a contested case and filed on August 12, 2015. N.J.S.A. 52:14B-1 to -15; N.J.S.A. 52:14F-1 to -13.

Oral argument was heard on August 14, 2015. At the hearing a dispute arose pertaining to the most recent IEP, and the record was held open to allow the parties to make final submissions regarding the IEP. The record closed on August 19, 2015.

FACTUAL DISCUSSION

W.R. is an eighteen year old student diagnosed with Asperger's disorder, obsessive compulsive disorder, attention deficit disorder, anxiety disorder and disruptive mood disorder. He has been placed by the Board at YALE in Cherry Hill, New Jersey since starting the 9th grade in 2011. W.R. completed the 12th grade in June 2015.

Pursuant to his IEP, W.R. participated in YALE's "Scholars" program in 11th grade and 12th grade. The Scholars program allows YALE students to take one college course per semester at Camden County College. He was transported there by YALE and received supports while at the college from YALE staff. By the end of 12th grade, W.R. had completed 148 high school credits and four college classes. His overall GPA

was 4.12. The Board determined that W.R. was ready to graduate with his class in June 2015, but petitioners challenged that determination and expressed concerns that his IEP goals were not specific and measurable with regard to transition and social skills.

As W.R. has participated in the Scholars program for the past two years, petitioners assert he should be placed in YALE's "Standard 9 Scholars program" under the stay put provisions of the Individuals with Disabilities Act (IDEA). Petitioners contend the Standard 9 Scholars program is the only program available at YALE for students enrolled in the Scholars program that matriculate out of 12th grade but do not graduate. The Board stated its willingness to honor the stay put placement for W.R. at YALE, but claims that placement in the Standard 9 Scholars program is not consistent with his current IEP and, therefore, not the appropriate program for him during the pendency of the due process litigation. The Board proposed to provide W.R. with an individually tailored program beyond 12th grade that will be calculated to meet his unique needs.

LEGAL ANALYSIS AND CONCLUSION

N.J.A.C. 1:6A-12.1(a) provides that the affected parent(s), guardian, board or public agency may apply in writing for emergency relief. An emergency relief application is required to set forth the specific relief sought and the specific circumstances that the applicant contends justifies 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 and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

Emergent relief shall only be requested for the following issues pursuant to N.J.A.C. 6A:14-2.7(r):

- 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 this case it is clear that there is no issue involving disciplinary action or graduation and there has been no break in services asserted. The Board asserts that there is no issue concerning W.R.'s placement pending the outcome of the due process proceedings because they have agreed to continue his placement at YALE. Petitioners assert that the dispute over the program to be provided at YALE concerns placement as the Board is attempting to not permit him to be placed in the Standard 9 scholars program. W.R.'s most recent IEP did not contemplate services to be rendered or in which programs he would be placed after completing the 12th grade. Therefore, I **CONCLUDE** that this matter concerns placement pending the outcome of due process proceedings.

The standards for emergent relief are set forth in Crowe v. DeGoia, 90 N.J. 126 (1982) and codified at N.J.A.C. 6A:3-1.6, one of the Department's regulations governing special education. These standards for emergent relief include irreparable harm if the relief is not granted, a settled legal right underlying a petitioner's claim, a likelihood that petitioner will prevail on the merits of the underlying claim and a balancing of the equities and interest, that petitioner will suffer greater harm than respondent. Petitioners have failed to establish that their claims fall within the emergent relief categories of N.J.A.C. 6A:14-2.7(r). Rather, they contend that they do not need to satisfy these standards since the stay put provisions of the IDEA function as an automatic preliminary injunction and they are seeking to enforce this injunction.

The IDEA requires that public schools provide students with disabilities residing within their boundaries a free and appropriate public education (FAPE). See, 20 USC § 1400, et. seq. The IDEA stay put provision requires that a child's placement at the time a disagreement arises between the parents and the school district, termed the "then-current educational placement," be protected while the dispute is pending. M.R v. Ridley Sch. Dist., 744 F.3d 112 (E.D. Pa. 2012). When looking at the current educational placement, the court looks to the program of services, not to a physical

location. In re Educ. Assignment of Joseph R., 2007 U.S. Dist. LEXIS 33070 (W.D. Pa. May 4, 2007). Once a court ascertains the student's current educational placement, the movants are entitled to an order without satisfaction of the usual prerequisites to injunctive relief. Drinker v. Colonial Sch. Dist., 78 F.2d 859, 864 (3rd. Cir. 1996). IDEA's stay put provisions contemplate that the student receives the last agreed upon program. It is not intended, however, that the student remain in a specific grade or class pending appeal. See, Federal Register, Comment on 300.514, Volume 64 No. 48, p.12616.

In this case, W.R.'s last agreed upon program was the YALE scholars program. The only program offered at YALE for students that matriculate out of 12th grade but do not graduate that is similar to the Scholars program appears to be the Standard 9 scholars program. Therefore, I **CONCLUDE** that W.R.'s appropriate stay put placement is the Standard 9 scholars program. The petitioners' application for emergent relief is, therefore, **GRANTED**.

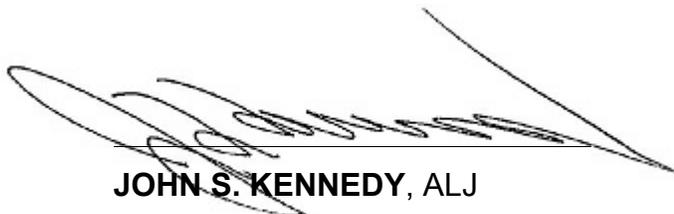
CONCLUSION AND ORDER

For the foregoing reasons, I **CONCLUDE** that petitioners are entitled to an order that W.R. shall be placed in YALE School's Standard 9 Scholars program pending the outcome of the due process petition. I **ORDER** that petitioners' Motion for Emergent Relief is **GRANTED**.

This decision on application for emergency relief shall remain in effect until the issuance of the decision on the merits in this matter. The hearing having been requested by the parents, this matter is hereby returned to the Department of Education for a local resolution session, pursuant to 20 U.S.C.A. § 1415 (f)(1)(B)(i). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

August 20, 2015

DATE



JOHN S. KENNEDY, ALJ

Date Received at Agency

August 20, 2015

Date Mailed to Parties:

August 20, 2015

cmo

WITNESSES

For Petitioners:

None

For Respondent:

None

EXHIBITS

For Petitioners:

P-1 Certification of C.R. with 2014 Educational Planning Conference
Document attached

From Petitioners' Supplemental Brief:

- A 2014-2015 YALE School Annual Review request form
- B College Course Payment Agreements
- C 2013-2014 IEP
- D Pardini v. Allegheny Intermediate Unit, 420 F.3d 181 (3d Cir. 2005)

For Respondent:

- R-1 W.R.'s High School Transcript
- R-2 Parent request for mediation
- R-3 Various correspondence between District and petitioners
- R-4 Confidential Neuropsychological Evaluation of Emily Perlis, Psy.D.
- R-5 Cumulative Grade Level Progress Report dated June 12, 2015
- R-6 2014/2015 Total Daily Behavior Points
- R-7 Social Skills Grid

- R-8 Correspondence from Respondent's attorney to Petitioner's attorney dated June 4, 2015
- R-9 2014-2015 IEP

From Respondent's Supplemental Brief:

- R-1 2014-2015 IEP
- R-2 2014 Educational Planning Conference Document