



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**AMENDED FINAL DECISION**

**EMERGENT RELIEF**

OAL DKT. NO. EDS 08408-23

AGENCY DKT. NO. 2024-36449

**D.W. ON BEHALF OF C.V.,**

Petitioner,

v.

**TRENTON PUBLIC SCHOOL DISTRICT**

**BOARD OF EDUCATION,**

Respondent.

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**D.W. on behalf of C.V.,** petitioner, pro se

**Elesia L. James, Esq.,** for respondent (City of Trenton Assistant General Counsel,  
attorneys)

Record Closed: September 6, 2023

Decided: September 7, 2023

BEFORE **SARAH G. CROWLEY, ALJ:**

**STATEMENT OF THE CASE**

In this matter, D.W. on behalf of C.V. (petitioner) brings an action for Emergent Relief against the City of Trenton Township Board of Education (respondent or District)

to request “stay-put” to continue the placement of A.C. at the Lewis School, a private school that C.V. was unilaterally placed in in 2019.

### **PROCEDURAL HISTORY**

On August 30, 2023, petitioner filed an emergent relief application with the Office of Special Education Programs (OSEP). The complaint was filed under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 to 1482. Petitioner seeks a stay-put order for the minor child at the Lewis School. Opposition was filed by the respondent on September 5, 2023. Oral argument was heard on the emergent application on September 6, 2023, and the record closed on that date.

### **FACTUAL DISCUSSION**

C.V. is a student with disabilities who just entered the eighth grade at the Lewis School, in Princeton, New Jersey. She was classified as eligible to receive special education services in the Trenton Public School District under the classification “multiply disabled.” C.V.’s guardian unilaterally placed her in the Lewis School in July of 2019. A due process action was filed in connection with the unilateral placement. That matter was resolved by a settlement agreement which was executed by and between the parties. A copy of this agreement is annexed to the District’s opposition papers. Pursuant to the Agreement and Release the District agreed to reimburse the petitioner for tuition at the Lewis School for the 2019 school year. However, the agreement specifically provides that such placement shall not be considered stay-put. Consistent with the agreement evaluations were conducted and an IEP meeting was conducted in May of 2021, wherein the District proposed a placement in-district with appropriate supports. No due process was filed in connection with that IEP. Thereafter, C.V. remained at the Lewis School for the 2020-2021, 2021-2022, and 2022-2023 school years as a private pay student. The District provided neither tuition nor services following the 2019-2020 school year.

### **FINDINGS OF FACT**

There is no dispute regarding the above facts, and I therefore **FIND** the foregoing as **FACT**.

### **LEGAL ANALYSIS**

Pursuant to N.J.A.C. 1:6A-12.1(e) and N.J.A.C. 6A:14-2.7(s)(1), emergency relief may be granted if the judge determines from the proofs that:

- i. The petitioner will suffer irreparable harm if the requested relief is not granted;
- ii. The legal right underlying the petitioner's claim is settled;
- iii. The petitioner has a likelihood of prevailing on the merits of the underlying claim; and
- iv. 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.

Furthermore, a parent or school district may request emergent relief for the following reasons, in accordance with N.J.A.C. 6A:14-2.7(r)1:

- i. Issues involving a break in the delivery of services;
- ii. Issues involving disciplinary action, including manifestation determinations and determinations of interim alternate education settings;
- iii. Issues concerning placement pending outcome of due process proceedings; and
- iv. Issues involving graduation or participation in graduation ceremonies.

Here, petitioner's claim fails under both the emergent relief standards of Crowe v. DeGioa and the standards for stay-put. It is clear that the District envisioned a return of the student to Trenton and conducted the appropriate evaluations and drafted the IEP in

May 2021. In addition, the agreement entered into between the parties in 2019 clearly stated that the Lewis School would not be considered stay-put and would furthermore, not be considered a district placement. Both parties were represented by counsel in this proceeding and the agreement was properly executed and approved by the Honorable David Fitch. Accordingly, there is no likelihood of success on the merits of the argument that Lewis School constitutes stay-put.

When the emergent-relief request effectively seeks a “stay-put” preventing 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 v. Colonial Sch. Dist., 78 F.3d 859, 864 (3d Cir. 1996) (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 in relevant part 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 current IEP from the district provides for an in district placement.

The relevant IDEA regulation and its counterpart in the New Jersey Administrative Code reinforce that a child 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) (2016); N.J.A.C. 6A:14-2.7(u). The stay-put provision functions as an automatic preliminary injunction which dispenses with the need for a court to weigh the factors for emergent relief such as irreparable harm and likelihood of success on the merits and removes the court’s discretion regarding whether an injunction should be ordered. However, there is no right to unilaterally place and argue that this has become stay put. This is the reason for the IEP provision in the stay put law. The parent in this case unilaterally placed the child and the district never agreed to the placement or that such placement would become “stay put.” In fact, there is an agreement between the parties that was negotiated with counsel and approved by this tribunal in November 2019, which specifically states that the Lewis School would not considered stay put or a district placement


In the present matter, the petitioner filed an emergent petition seeking continued placement in the Lewis School. However, there was never any right to continued placement in the Lewis School. The last IEP dated May 21, 2021, provided for an in-district placement. Moreover, pursuant to the language of the agreement executed by and between the parties in 2019, the unilateral placement at the Lewis School was not to be considered stay-put. The agreement clearly stated that the enrollment in Lewis was not to be considered a district placement and consistent with that language, the District has not paid for such placement.

After hearing the arguments of petitioner and respondent and considering all documents submitted, I **CONCLUDE**, that the petitioner's motion for emergent relief is **DENIED**.

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.

September 7, 2023

DATE

  
SARAH G. CROWLEY, ALJ

Date Received at Agency:

September 7, 2023

Date Mailed to Parties:

September 7, 2023

DJB/kl/mp