



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

**FINAL DECISION**

**ON EMERGENCY RELIEF**

OAL DKT. NO. EDS 10681-23

AGENCY DKT. NO. 2024-36579

**T.M. AND G.M. ON BEHALF OF L.M.,**

Petitioners,

v.

**WATCHUNG HILLS REGIONAL**

**BOARD OF EDUCATION,**

Respondent.

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**James F. Gallagher**, Esq., for petitioner (Hinkle Prior & Fischer, Attorneys at Law,  
attorneys)

**Marc G. Mucciolo**, Esq., for respondent (Busch Law Group LLC, attorneys)

Record Closed: October 16, 2023

Decided: October 16, 2023

BEFORE **ELAINE B. FRICK**, ALJ:

**STATEMENT OF THE CASE**

Petitioners, T.M. and G.M., parents on behalf of their minor child, L.M., seek emergency relief of stay put, asserted to be at ECLC School in Chatham (ECLC), a private school placement the student attended in the 2022-2023 school year, and the same school that was to be the student's continued placement for the 2023-2024 school year,

pursuant to the last Individualized Educational Program (IEP). Respondent, Watchung Hills Regional Board of Education (the BOE or the District), opposes the request, confirming there was a 2023-2024 school year IEP for continued placement at ECLC, but with the student's change of circumstances with an alleged change in residency, the District disenrolled L.M. and canceled the contract for education at ECLC. The student is now presented to the District with no "then current" placement due to the disenrollment and cancellation of the ECLC contract. The District believes it can provide a Free Appropriate Public Education (FAPE) in the District's high school. Hence, the District contends the emergent relief sought for stay put at ECLC is improper since the student has no "then-current educational placement" at ECLC, as per 20 U.S.C. § 1415(j).

### **PROCEDURAL HISTORY**

On September 22, 2023, petitioners submitted their due process petition for relief to the Department of Education (DOE), seeking stay put of the student in the prior out of district private school placement. Petitioners' emergent relief petition was submitted on October 9, 2023. The DOE has transmitted only the emergent relief petition to the Office of Administrative Law (OAL), where it was filed on October 11, 2023, to be heard as an emergent contested matter. N.J.S.A. 52:14B-1 to 14B-15; N.J.S.A. 52:14F-1 to 14F-13.

When the emergent relief request was transmitted to the OAL, it was scheduled for oral argument to be heard via Zoom audio/video technology on October 16, 2023. Respondent submitted via email its papers in opposition to the emergent application on October 13, 2023. The Zoom proceeding was conducted on October 16, 2023, and the emergent record closed.

### **FACTUAL DISCUSSION AND ARGUMENTS OF THE PARTIES**

Based upon the written submissions of the parties, and argument heard from the parties, the following information was uncontroverted, and thus I **FIND** as **FACTS** the following:

L.M. is the sixteen-year-old child of T.M. and G.M. The family resides in the Watchung Hills school district. L.M. is diagnosed with Down syndrome and qualifies for special education and related services under the classification of “mild intellectual disability.”

During the 2022-2023 school year, L.M. attended ECLC in Chatham. The student’s most recent IEP, dated February 28, 2023, is for L.M.’s 2023-2024 school year, which continues L.M.’s placement at ECLC. (Exhibit A petitioners’ brief, IEP at 6.) The IEP recommended an Extended School Year (ESY) in district for the summer of 2023. (Exhibit A petitioners’ brief, IEP at 14; Exhibit 1 respondent’s brief.)

In July of 2023, the parents, L.M., and L.M.’s grandfather, traveled to Florida to vacation there. While in Florida, L.M.’s grandfather experienced a medical emergency, requiring the family to remain in Florida, while L.M.’s grandfather was hospitalized. On August 31, 2023, G.M. informed L.M.’s case manager about the family emergency, which would result in L.M. missing the first weeks of school. The parents could not provide a date certain as to when L.M. would return to New Jersey.

The first day of school at ECLC was September 6, 2023. (Exhibit B petitioners’ brief.)

The District’s Vice-Principal authored a letter to the parents, dated September 6, 2023, which notes it is in reference to “L.M: *Deletion From School Rolls.*” (Exhibit C petitioners’ brief, italics original.) The letter states:

Thank you for letting us know that [L.M.] is not currently residing within New Jersey. Since she is not here, we are currently removing her from our school rolls. We understand that [L.M.] is residing in Florida right now and should be able to access educational services there. If [L.M.] returns to living in Warren, please know that we remain ready, willing and able to offer her appropriate educational services. She just will need to be re-registered at that point. If Florida develops an

IEP for her while she is there, we would need that document upon her re-enrollment as well.

(Exhibit C petitioners' brief.)

The District canceled its contract with ECLC for L.M. to attend there for the 2023-2024 school year, sometime in September.

Petitioners initiated their due process petition on September 22, 2023, seeking to continue L.M.'s placement at ECLC. On September 28, 2023, L.M. returned to New Jersey.

On September 29, 2023, petitioners re-registered L.M. in the District, as they were advised she needed to be re-enrolled due to the removal of L.M. from the District's rolls. On October 3, 2023, petitioners were advised by email by Dr. O'Halloran, L.M.'s case manager:

As per my director Michele Deremer you are invited to a meeting here at WHRHS tomorrow 10/4/23 at 7:30AM. A WHRHS schedule for [L.M.] has been developed and we are prepared to start her in it tomorrow.

(Exhibit D petitioners' brief; Exhibit 2 respondent's brief.)

### **Arguments of the parties**

Petitioners assert they are entitled to the emergent relief of L.M. attending ECLC under stay put, since ECLC is the school L.M. attended for the 2022-2023 school year, which was to be the continued placement for the 2023-2024 school year, pursuant to the student's most recent IEP. They contend the District's position is preposterous and demonstrates the District is disingenuous by maliciously changing L.M.'s placement unilaterally, having issued a flawed "disenrollment" letter. The family never changed its residency and was in Florida for vacation. Due to a family medical emergency, they remained in Florida longer than anticipated. They never intended to disenroll L.M. from the District or ECLC. They contend they acted in good faith when they advised the District,

just prior to the start of the 2023-2024 school year, of their circumstances and admittedly could not provide a date certain as to when they would return to New Jersey.

Respondent contends petitioners' request for emergent relief should be dismissed since the proper procedural action petitioners should have taken would have been a petition before the DOE regarding enrollment of the student, not stay put under the Individuals with Disabilities Education Act (IDEA). The District asserts they acted appropriately by disenrolling the student in September, when the family was reportedly residing out of state. The contract with ECLC was cancelled. When the family returned to New Jersey, and re-enrolled L.M. in the District, there was no "then-current educational placement." Although the District acknowledges that the last IEP provided for L.M. to attend ECLC for the 2023-2024 school year, the IEP also had a provision that ESY was to be provided in the District. Also, the District asserts it repeatedly offered to L.M. during the last school year, that L.M. could be educated in the District's high school, rather than ECLC. The student attended a visitation program at the high school one day during the last school year. The District contends it can provide a Free Appropriate Public Education (FAPE) in the district's educational program. Thus, the District asserts the emergent matter should be dismissed since there is no then current educational placement requiring stay put at ECLC.

### **LEGAL ANALYSIS AND CONCLUSIONS**

The New Jersey Administrative Code provides that parent(s), guardian(s), or the District BOE, or a public agency, may apply in writing for emergency relief. N.J.A.C. 1:6A-12.1(a). An applicant for emergency relief must set forth in their application the specific relief sought and the specific circumstances they contend justify the relief sought. Id.

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.

Petitioner student, L.M., is a minor child student entitled to receive special education and related services. Petitioners submitted a due process petition to enforce L.M.'s attendance at ECLC, as per the last IEP, for the 2023-2024 school year. This is an issue concerning placement of L.M. pending the outcome of petitioners' underlying due process matter. I **CONCLUDE** the petitioners' emergent relief issue has been appropriately filed and may be considered pursuant to N.J.A.C. 6A:14-2.7(r)1iii, regarding issues concerning placement pending the outcome of a due process proceeding.

The stay put provision under the IDEA provides that there is an automatic preliminary injunction which prevents a school district from making a change in placement from the last agreed upon IEP, during the pendency of a petition challenging a proposed IEP. 20 U.S.C. § 1400, et seq., Drinker v. Colonial School District, 78 F.3d 859, 864 (3d Cir. 1996) and Zvi D. v Ambach, 694 F.2d 904, 906 (2d Cir. 1982). The purpose of stay put 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, 270–271 (D.N.J. 2006).

There are two exceptions to the stay put provision. The first is if the parties agree to a different placement, otherwise “the child shall remain in the then-current educational placement of the child.” 20 U.S.C. § 1415(j). The second exception arises under the disciplinary provisions of IDEA, 20 U.S.C. § 1415(k), which is not applicable here.

In this matter, the last IEP for L.M. is undisputedly from February 28, 2023. That IEP provides for L.M. to continue attendance at ECLC for the 2023-2024 school year.

Nothing has been presented to demonstrate that petitioners changed their residency or had any intent to change their residency or domicile. They advised the District the student would not be present for the first few weeks of the school year due to a family medical emergency. Since no specific return to school date was provided by the parents, the District, on its own initiative, issued the disenrollment letter on the first day of school, and then cancelled the required contract for L.M. to attend ECLC for the 2023-2024 school year.

Petitioners' due process petition seeks to continue the placement at ECLC for the 2023-2024 school year. Simply because the District issued the disenrollment letter does not negate the fact that the last IEP with a then current placement, continued L.M.'s placement at ECLC through the end of the 2022-2023 school year and for the 2023-2024 school year. The District's letter itself specifies that if an IEP is developed in Florida, and the family returned to New Jersey, the District would need the IEP. The IEP of February 28, 2023, is the last IEP implemented, confirming that ECLC enrollment would continue for L.M. for the remainder of the 2022-2023 school year and for the 2023-2024 school year. I **CONCLUDE** that stay put for L.M. is at ECLC school, pending the due process hearing. I thus **CONCLUDE** that petitioners' request for emergent relief for stay put at ECLC is **GRANTED**.

### **ORDER**

It is **ORDERED** that petitioners' emergent relief request for stay put of minor student, L.M., at ECLC school 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. § 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.

October 16, 2023  
DATE



ELAINE B. FRICK, ALJ

Date Received at Agency \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

EBF/lam



## **APPENDIX**

### **Petitioners' submission**

- October 7, 2023, Application for Emergent Relief Brief with attachments:
  - Exhibit A IEP, dated February 28, 2023
  - Exhibit B ECLC 2023-2024 school year
  - Exhibit C Watchung Hills Vice principal's letter, dated September 6, 2023, referencing L.M. - Deletion from school rolls
  - Exhibit D Email, dated October 3, 2023, to parents from the District
- Certification in Support of Petition for Emergent Relief by T.M. and G.M., signed October 6, 2023

### **Respondent's submission**

- October 13, 2023, Letter Brief in opposition to emergent relief request
- Certification of Michele Deremer, Director of Special Services, signed October 13, 2023, with attachments:
  - Exhibit 1 IEP, dated February 28, 2023
  - Exhibit 2 Email, dated October 3, 2023, to parents from the District