



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON APPLICATION

FOR EMERGENT RELIEF

OAL DKT. NO. EDS 11539-14

AGENCY DKT. NO. 2015 21718E

H.S. and M.S. ON BEHALF OF A.S.,

Petitioners,

v.

HARRISON TOWNSHIP

BOARD OF EDUCATION,

Respondent.

Jamie Epstein , Esq., for petitioner

Brett Gorman , Esq., for respondent (Parker McCay, PA, attorneys)

Record Closed: September 17, 2014

Decided: September 18, 2014

BEFORE JOHN F. RUSSO, Jr., ALJ:

STATEMENT OF THE CASE and FACTUAL DISCUSSION

This matter arises under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415 et seq. On September 9, 2014, the parents of A.S. filed a request for emergent relief and due process with the Office of Special Education Programs alleging a violation of the stay put by the school district and seeking that the district facilitate the “stay-put placement” of A.S. at the Jeffery Clark School at the East Greenwich School District in an inclusive classroom in an out of district placement.; and that Harrison ensure A.S.’s program at the Clark School is comparable to his 2013-14 program at the Cherrywood School. This matter was transmitted to the Office of Administrative Law where it was filed on September 11, 2014, assigned OAL Dkt. No. EDS 11539-14, and was scheduled as an emergent relief hearing before me on September 17, 2014.

The district filed its brief in this matter on September 15, 2014, that interestingly indicates that the district agrees with the relief sought by the parents and does not oppose this emergent application. However, the district seems to be under the impression that the Greenwich Township Board of Education is no longer able or willing to educate this student. The district was concerned by an undated letter from the East Greenwich Township Schools, which indicates that it is “unable to take [A.S.] as a tuition student.” (See Exhibit R of District’s brief). Conversely, also attached to the district’s brief at Exhibit G, is an email from Joan Ruberton, (of the district) to A.S.’s father dated August 22, 2014, that indicates that “East Greenwich has accepted [A.S.] as a student in their district.” Petitioner’s attorney represented that he had subpoenaed a representative from East Greenwich Schools to appear at the emergent hearing before me on September 17, 2014, but no one appeared to testify at the hearing.

I **FIND** the following facts:

1. The respondent district did not oppose petitioner’s request for emergent relief.
2. Both parties agreed that the district would provide A.S. with an out of district placement in an inclusionary program at the Clark School in the school district of East Greenwich Township that would be consistent with the program and services that A.S. received at Cherrywood, which was the previous stay-put placement.

3. As of August 22, 2014, East Greenwich did “accept [A.S.] as a student in their district.”
4. Due to the fact that no one appeared to testify from East Greenwich at the hearing on September 17, 2014, I am unable to find as a fact that East Greenwich will not accept A.S. as a student in its district, and therefore, that remains an open issue.
5. I am unable to find as fact that the respondent district did anything to subvert to placement of A.S. as a tuition student at East Greenwich.

LEGAL DISCUSSION

This case is governed by regulations adopted by the State of New Jersey in implementation of Federal Law and Regulations. N.J.A.C. 6A:14-7.6(b) provides

When the parent or district board of education requests mediation or due process, the student with the disability shall remain in the current placement, according to N.J.A.C. 6A:14-2.6(d)¹⁰ or 2.7(u), as applicable.

N.J.A.C. 6A:14-2.7(u) is the applicable section and provides

Pending the outcome of a due process hearing, including an expedited due process hearing, or any administrative or judicial proceeding, no change shall be made to the student’s classification, program or placement unless both parties agree, or emergency relief as part of a request for due process hearing is granted by the Office of Administrative Law according to (m) above or as provided in 20 U.S.C. § 1415(k)⁴ as amended and supplemented.

In this case, the school district does not oppose petitioner’s application for emergent relief, but is claiming that East Greenwich is no longer able to accept A.S. as a student. I was not able to find as a fact that East Greenwich is no longer able to accept A.S. as a student, so the stay-put placement shall remain as the parties had

previously agree which is as an out of district placement in an inclusionary program that is consistent with the program that A.S. received at Cherrywood. I was not able to find as a fact that respondent did anything to subvert this placement.

ORDER

For the reasons set forth above, I **CONCLUDE**, specifically, due to the fact that respondent did not oppose the petitioner's emergent application that the petitioners have met their burden of proof, and, as such, I **GRANT** the petitioners' application for emergent relief. I **CONCLUDE** that the District must immediately ensure that A.S. is enrolled at the Clark School in an inclusionary program that is consistent with the program set forth in C-1, which is A.S.'s "stay put" placement for the remainder of the present due process petition.

It is hereby **ORDERED** that the respondent district within twenty-four hours of receipt of this Order forward to the Clark School a copy of this Order and a copy of C-1 and C-2, in an effort to have the Clark School enroll A.S. in an inclusionary program consistent with program as set forth in C-1, until such time as A.S.'s educational placement is changed in accordance with the procedures of the IDEA or until the pending due process hearing is resolved.

It is further **ORDERED** that the respondent district immediately comply with any of the requests of the Clark School to facilitate this placement.

It is further **ORDERED** that the District immediately ensure that A.S.'s program at the Clark School is consistent with the program set forth in C-1.

It is further **ORDER** that A.S. shall be immediately be accepted as a student at the Clark School in an inclusionary program that is consistent with the program set forth in C-1 and that this placement shall continue pending the outcome of the within due process hearing.

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 18, 2014 _____
DATE **JOHN F. RUSSO, JR., ALJ**

Date eMailed to Parties:

September 18, 2014

JFR/bdt

APPENDIX

EXHIBITS

For the Court:

C-1 IEP 2013-2014 School Year

C-2 Order