



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

**ORDER ON APPLICATION**  
**FOR EMERGENT RELIEF**

OAL DKT. NO. EDS 1263-14

AGENCY DKT. NO. 2014 20683

**M.H. ON BEHALF OF A.H.,**

Petitioner,

v.

**WASHINGTON TOWNSHIP**

**BOARD OF EDUCATION,**

Respondent.

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**Jamie Epstein, Esq.,** for petitioner

**Sanmathi Dev, Esq.,** for respondent (Capehart & Scatchard, P.A., attorneys)

BEFORE **JOSEPH F. MARTONE, ALJ T/A:**

**STATEMENT OF THE CASE**

Prior to the continuation of the due process hearing scheduled for September 9, 2014, attorney for the petitioner made oral application to this tribunal seeking immediate emergent relief based upon the school district's actions and conduct refusing to honor the stay put placement of A.H. in a mainstream classroom setting with support.

At the hearing, upon further inquiry, it was learned that on or about August 21, 2014, respondent school district, through counsel, attempted to file a due process petition for declaratory judgment with the Office of Special Education. In that petition, it sought a determination that a June 11, 2014, IEP proposed by the school district, which was not the subject of the parent filing for mediation or due process contesting or challenging that IEP, was the stay put IEP for A.H. It was further learned that by correspondence from the Office of Special Education Programs dated August 27, 2014, the due process petition for declaratory judgment was returned with a notation that “the parent must file a determination of stay-put. Since there is a case pending a motion should be made directly with the ALJ for a determination of the Stay-Put.”

It was further learned that on September 8, 2014, M.H., the parent of A.H., filed a due process hearing request for emergent relief with the Office of Special Education Programs alleging a violation of the stay put by the school district and seeking that A.H. be returned to his prior stay put placement. This matter was transmitted to the Office of Administrative Law, assigned OAL Dkt. No. EDS 11286-14, and was in the process of being scheduled as an emergent relief hearing.

After learning the above, I conferred with the parties on the record and explained that under the provisions of N.J.A.C. 1:6A-12.1(a), any time after hearing is requested, the affected parent(s), or the public agency may apply in writing for emergency relief in the pending proceeding. The further rule that the due process petition for declaratory judgment filed by the school district and the due process hearing petition filed by the parent both have been filed by motions for emergent relief. In view of this, the attorney for petitioners withdrew the petitioner’s due process hearing request on the specific condition that it be converted to a motion for emergent relief. I granted that request on the condition that a letter of withdrawal specifying the condition that it be so converted be submitted as soon as possible.

Further, attorney for respondent school district likewise agreed to withdraw any request for due process petition for declaratory judgment on the condition that its withdrawn petition be considered as an application for emergent relief. I agreed to this on the condition that a letter to that effect also be submitted to this Office.

### **UNDISPUTED FACTS**

The undisputed facts in this matter are those set forth in the documents referred to above.

On June 11, 2014, an annual review IEP meeting was convened by the IEP team to discuss and develop A.H.'s program and placement for the extended school year for summer 2014 and for his second grade program and placement for the 2014-2015 school year. Parent M.H. attended the meeting with counsel. At that meeting the school district proposed a self contained ESY program and proposed the Hurffville program and placement for the 2014-2015 school year. The parents were provided with proper written notice of the proposed program and placement offered at that meeting. Following this, the parents failed to file for mediation or due process contesting or challenging the June 11, 2014 proposed IEP within fifteen days, and sent A.H. to the self contained ESY program during the summer of 2014.

It is on this basis that the school district takes a position that the June 11, 2014 IEP is the stay put IEP for A.H.

It is undisputed that the parents expected that the school district would comply with the prior stay put which is a mainstream class at Thomas Jefferson School and expected on Thursday, September 4, 2014, he would be accepted into the second grade mainstream classroom as the stay put placement. However A.H. was not allowed to attend and was "locked out" in the words of the parent and counsel.

### **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, by its actions on June 11, 2014, the school district violated the provisions of subsection (u) by attempting to make a change in the student's program and placement pending the outcome of the within due process hearing. While I recognize that the school district is seeking to make this change because of its opinion that A.H. is not progressing in the mainstream setting, the mandate of this section is clear.

### **ORDER**

Therefore, in this situation I am constrained to **ORDER** that the prior placement of A.H. at the Thomas Jefferson School in a mainstream class with supports shall be continued pending the outcome of the within due process hearing or unless both parties agree or emergency relief is granted by the Office of Administrative Law otherwise determining a different stay put placement. I further **ORDER** that such continued stay put placement shall occur no later than Friday, September 12, 2014.

I further **ORDER** that A.H. shall be accepted as a student at the Thomas Jefferson School mainstream second grade class on Friday, September 12, 2014, and that this placement shall continue pending the outcome of the within due process hearing.

I further **ORDER** that since this motion was considered and ruled upon on short notice that attorney for respondent shall have seven working days within which to provide legal research and a memorandum of law referring to any Court or administrative decisions contrary to the within ruling.

This order on application for emergency relief shall remain in effect until issuance of the decision in the matter. The next hearing date in this matter is scheduled for October 15, 2014. 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 11, 2014 \_\_\_\_\_

DATE



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**JOSEPH F. MARTONE, ALJ**

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

JFM/cb