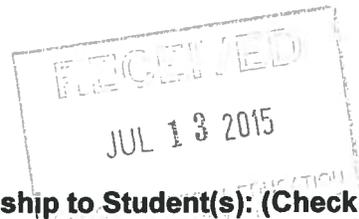


**NEW JERSEY DEPARTMENT OF EDUCATION
PARENTAL REQUEST FOR ENFORCEMENT OF DECISION ISSUED
BY THE OFFICE OF ADMINISTRATIVE LAW**

Date: July 8, 2015

To: **Peggy McDonald, Director**
Office of Special Education Programs
NJ Department of Education
P.O. Box 500
Trenton, NJ 08625-0500



Relationship to Student(s): (Check One)
 Parent/Guardian Attorney
 Advocate

From: S [redacted] and J [redacted] B [redacted] Advocate Hank Pomerantz
(Name of person submitting the request)

Address: [redacted] Branchville, NJ

Phone: [redacted] Fax: () - Email address: [redacted]

Please note: the Office of Special Education (OSEP) must have a copy of the ALJ's decision before any action can be taken with respect to a request for enforcement.

Is a copy of the final decision (or Order) issued by the Administrative Law Judge (ALJ) included with this request? Yes No If not, is a copy being sent by separate mailing? Yes No

What is the date of the ALJ's decision? June 19, 2015

Subsequent to issuance of the decision, have the parties reached any agreements that modify the decision or the terms of the Order? Yes No (If yes, explain below)

Note: If any part of the decision is modified by subsequent agreement of the parties, enforcement may not be sought with respect to that part of the decision.

When was the action that you are seeking to enforce directed to occur? Immediately – Deniz Baldini was to be retained as a senior – Sussex County Technical School has signaled with their letter that they will not be complying with the Decision handed down by Judge Sanders, A.L.J.

Note: A request for enforcement must be made to the OSEP no later than the 90th calendar day from the date that the action directed in the hearing decision that is the subject of the enforcement was required to have occurred. If your request is untimely, the OSEP will not enforce the request.

Are you currently involved in, or have you recently requested, mediation or a due process hearing?
 Yes X No

If you have recently requested mediation or a due process hearing, what is the subject of the disagreement?

The only due process situation we have been involved with was the one with the decision dated June 19, 2015 (see attached) that this complaint is addressing.

Briefly state the specific provision (identify the page and paragraph) of the decision that you assert the education agency has failed to implement.

Attached you will find the letter from the Superintendent of Sussex County Technical School (dated July 2, 2015) The district was ordered to follow Judge Sanders, A.L.J. directives indicating among other things that a "stay-put" directive was put in place. We quote (page 5 – paragraph continuing from page 4) "is entitled to stay-put placement in the Sussex County Technical School, where [redacted] was receiving educational services at the time the dispute arose." In contrast, the school sent the parents a letter stating that [redacted] could return as a non-matriculating student until December 2015 to complete the hands-on program and the parents would be required to provide transportation. They also continue to state that D [redacted] has graduated from the school in contrast with the judge's notation that [redacted] was not graduated as a result of the stay put provision.

We (the petitioners) sought to have D [redacted] return for a full year, full day of instruction – a repeat of [redacted] senior year (page 2 of decision – continued paragraph from 1st page). Judge Sanders, A.L.J. approved our petition (page 2 of the decision – 2nd full paragraph.)

Attached is a copy of our response to the letter from the Superintendent of Sussex County Technical School.

Attached is a copy of the decision of Judge Sanders, A.L.J.

Attached is a copy of the power of attorney for D [redacted] B [redacted] as [redacted] is [redacted] years old..

Attached is a copy of the certified receipts for the letters (with copies of this document attached) sent to Sussex County Technical School.

Attached is a copy of the parents letter in response to the Superintendent's letter.

Upon receipt of a request for enforcement, the OSEP will forward a copy of the request to the district for response and, if appropriate, the opportunity to resolve the request with the parent. If the matter is not timely and satisfactorily resolved by the parties, however, the district will be directed to submit to the OSEP evidence of compliance, whereupon, the OSEP will determine the implementation of the decision. If it is determined that the district has failed to implement the decision, or part of the decision, the OSEP shall order the district to implement the decision or part of the decision, as appropriate.

Signature [redacted]
(Person(s) Submitting Request)

Official Correspondence

RE: Failure to comply- Decision on Emergent Relief
(OAL DKT. No. EDS 08555-15)
(Agency DKT. NO 2015-22912)

Dear Mr. Modla,

We are in receipt of your letter. Let this be notice that we will be contacting the Director of the Office of Special Education in accordance with Judge Sanders, A.L.J. ruling. We do not wish to re-argue this case with a special meeting with the district. Both sides put their case before the Administrative Law Office and the decision was made. We respectfully request that Sussex County Technical School follow the mandate set out by the decision in Judge Sanders, A.L.J. ruling.

Unfortunately, at this time we feel that your letter signals that Sussex County Technical School will not be fully implementing the program required under Judge Sanders, A.L.J. ruling and for what we see as flagrant violations of the special education law. The following is the repudiation of your letter dated July 2, 2015.

- 1) Judge Sanders, A.L.J. stated in her ruling, I quote: *"They (the petitioners – JB) further argue that the one-on-one home-based instruction that was provided to their [REDACTED] helped [REDACTED] to achieve good grades in the core subjects but that [REDACTED] communication deficits are such that repeating the entire year would be in [REDACTED] best interest."* While there was a discussion about D [REDACTED] needing to complete [REDACTED] technical education, it was reasoned by us that the appropriate placement for D [REDACTED] was to be at Sussex County Technical School as a full time student. In fact, Judge Sanders asked us directly during the recorded session of the hearing if that was our intention to have D [REDACTED] repeat the school year academically and technically. We affirmed that due to [REDACTED] communication deficits it would be in the best interest of D [REDACTED] to receive a full year, full day of instruction at Sussex County Technical School, as [REDACTED] is a special education student [REDACTED] has the option to attend school until the age of 21, D [REDACTED] is currently [REDACTED].
- 2) You state that Sussex County Technical School is working hard to find a solution, and that you won't change any of your policies. While it could be argued that your failure to implement Judge Sander's, A.L.J. ruling is NOT working hard to find a solution, we will let those in the proper position judge your response for what it is. However, let us make it clear that the Sussex County Technical Schools policy, 5410 Promotion and Retention in accordance with the state code N.J.S.A. 18A:35-4.9, and in regards to D [REDACTED]'s retention (and as we stated in the recorded session of the hearing) the district's policy states clearly that retention will be *"in the best interest of the student"*, which is the same wording used by Judge Sanders, A.L.J. in her ruling (see number 1 above). This phrase in this situation triggers us to ask – How is the plan, laid out in your letter of July 2, 2015 for D [REDACTED]'s 2015-2016 school year, *in the best interest of the student?* We again argue, your plan isn't in the best interest of D [REDACTED]. In fact, the plan laid out in your July 2, 2015 letter would be the opposite of the best interest of D [REDACTED] as it would single out D [REDACTED] among [REDACTED] peers, stigmatize [REDACTED] in a way that ostracizes [REDACTED] from those students within the school. While a retention would allow [REDACTED] to adjust into the school as a normal student would. We can only surmise from your letter of July 2, 2015 that the proposed plan

would be in the best interest of Sussex County Technical School.

- 3) D. ■ is not considered a ■ year student, ■ is a retained senior. A ■ year student suggests that ■ goes beyond the senior year as you would suggest – *a post-secondary graduate*, which was not our stated request in the hearing. As far as D. ■'s matriculation, your claim that ■ is a post-secondary student flies directly against the order of Judge Sanders A.L.J., We quote: “*is entitled to stay-put placement in the Sussex County Technical School, where ■ was receiving educational services at the time the dispute arose.*” We fail to recognize the Sussex County Technical School Boards authority over that of the Administrative Law Judge in this matter, in light of the clarity of the statement by Judge Sanders, A.L.J. To wit, we concede that D. ■ received high honors, and we do not doubt it was from the high level of education that Sussex County Technical School provided. However, it is not an appropriate statement to declare ■ learning complete and claim there is no possible way that the school can help a student who is so educationally challenged. Again we quote Judge Sanders A.L.J. decision “*As was pointed out in Cronin, simply allowing the vocational technical school to declare an end to services would render the stay-put provision meaningless because the district could unilaterally graduate handicapped children.*”

In such that D. ■ is to remain a full time student at the Sussex County Technical School ■ will be provided the opportunity for transport to and from school in the same manner as ■ has been since ■ was accepted there. Failure to comply with transportation would trigger a filing of a complaint investigation from us with the NJDOE against Sussex County Technical School for failure to comply with the requirement of schools to provide transportation for a student. While we recognize that Kittatiny would provide transportation, it is at the direction of Sussex County Technical School and your failure to act in the way “standard practice” has dictated would exasperate the situation and signal a negative intent of Sussex County Technical School, which would make us worry that the administration might attempt to further target our ■.

- 4) We can only assume from your letter in which you state “*If it is still your position that D.B. continues to need more academic instruction (even though ■ qualifies to graduate with Honors), Sussex Tech cannot offer it.*” that the administration of Sussex County Technical School is unable to academically challenge a special education student with a series of deficits off the WJ-IV which include – Basic Reading ■, Reading Comprehension ■, Reading Fluency ■, Written Expression ■, Math Calculation ■, and Math Problem Solving ■. This statement of yours confuses us since during discussion on D. ■'s schedule for the 2014-2015 school year it was suggested to put D. ■ in a more challenging curriculum. At the time we elected to go for the smaller classes and easier curriculum. We wonder why these more challenging courses are unavailable for the 2015-2016 school year.
- 5) Additionally, it was successfully argued in the hearing before Judge Sanders A.L.J. that a rationale for D. ■'s returning to Sussex County Technical School was founded in the knowledge that ■ is comfortable, and knowledgeable of the students in the class of 2016 as well as comfortable and supported by the staff which Sussex County Technical School employ. It would be in an environment commensurate with ■ social and academic needs. Your

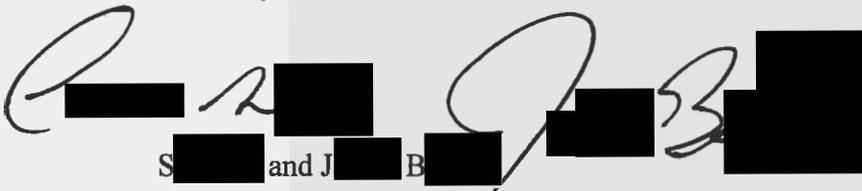
suggestion that we seek services somewhere else is A) not our place since [REDACTED] is a student of your district, and that would be a decision made by the Child Study Team and B) another placement would not be in the best interest of D [REDACTED]. Please consider this notice that as the parents we will not endorse nor accept another placement under the current conditions. However we would be interested in a written explanation as to why Sussex County Technical School would fail in its duty to supply [REDACTED] with an education [REDACTED] is entitled to.

Finally, the sole purpose that the Technical School system was put in place decades ago was to provide an appropriate education for students like D [REDACTED]; students who would not be able to go off to college and hope to find a job using their hands in a technical field. Sussex County Technical School receives high levels of funding from our county, state and federal dollars because it was intended to meet this mission. These jobs require higher level brain functions as well, higher order math and reading comprehension for plans, work orders, etc. Your attempts to deny D [REDACTED] the opportunity to improve [REDACTED] academically through an erroneous claim of not having services that would meet [REDACTED] needs is against the original mandate set out by the state in regards to technical schools. The suggestion that D [REDACTED] seek help beyond the district is again, simply another example of Sussex County Technical School abrogating its responsibility. Denying D [REDACTED] this opportunity is Sussex County Technical School failing the mission to the county to equip their graduates and fails to meet the schools own high standards.

In conclusion you will find the appropriate copies of paperwork that is being supplied to the Office of Special Education in accordance with the request of parent request for enforcement of decision issued by the Office of Administrative Law. Please note the power of attorney in which D [REDACTED] B [REDACTED] has granted [REDACTED] mother S [REDACTED] B [REDACTED] the ability to make decisions in regards to educational matters. We should also explain that this process is taking a significant amount of our time in order to get your school to follow the law; time, effort and expense which we have not been compensated for while you utilize a lawyer that comes from our taxes to circumvent the law. Sussex County Technical School is a school of choice, we as a family made the decision to choose your school, and you choose us. The method and style in which the administration is treating us is a violation of that trust.

The school has demanded that we make a decision about their offer by 7/17/15. In response to the request we have filed an action with the Director, Office of Special Education and will not respond to your offer beyond this letter until the Director has issued a decision.

Sincerely,


S [REDACTED] and J [REDACTED] B [REDACTED]

CC:

Director, Office of Special Education Programs: Peggy McDonald
Executive County Superintendent (Sussex County) Rosalie S. Lamonte, Ph.D.
Acting Director and Chief, Administrative Law Judge Laura Sanders
Supervisor of Special Education, Kathleen Finley
General Counsel, Janet Lucas, Esq.



SUSSEX COUNTY TECHNICAL SCHOOL
105 North Church Road, Sparta, New Jersey 07871

Phone: (973) 383-6700

FAX: (973) 383-6951

July 2, 2015

Mr. and Mrs. J. [REDACTED] E. [REDACTED]
[REDACTED]
Sandyston, New Jersey 07826

Re: D.B. (E. [REDACTED])
Settlement of Due Process matter

Dear Mr. E. [REDACTED]:

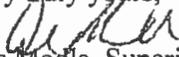
I write to advise that the Board has approved a practical for D.B. Considering D.B.'s successful completion of [REDACTED] academics, and your position before Judge Sanders, A.L.J., that you request additional Shop time, Sussex Tech has worked hard to find a solution that meets your specific request, while also comporting with Sussex Tech's policies and current curriculum, and not inventing new policy for this matter.

Specifically, the Board shall allow D.B. to return as a non-matriculating student from September 2015 until December 2015 to complete the practical and shall waive the post-secondary Shop fee. The District shall also bear the cost for D.B. to take the Shop Assessment offered by the National Occupational Competency Testing Institute (N.O.C.T.I.) in March 2016. Please be advised that the student /family will provide all transportation to and from Sussex Technical School.

Although D.B. may return in Fall 2015, [REDACTED] is not deemed a [REDACTED] year student, but rather, a post-secondary graduate who is returning to complete the practical portion of the Shop degree only. If it is still your position that D.B. continues to need more academic instruction (even though [REDACTED] qualifies to graduate with Honors), Sussex Tech cannot offer it. I would advise that you contact Social Resources to determine what school, if any, offers D.B. continuing education at this level.

We request that you advise of your decision by **Friday, July 17, 2015**, as the District is preparing schedules for Fall 2015. If you are unable to advise of your decision by Friday, July 17th, please advise in writing and provide the reasons therefor. Also, please be reminded that the Office of Administrative Law recognizes the parties' efforts to settle outstanding matters. Should you have any questions, Sussex Tech representatives are happy to meet with you.

Very truly yours,


Gus Modla, Superintendent

C: Kathleen Finley, Supervisor of Special Services
Janet C. Lucas, Esq., Board Attorney



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

DECISION ON
EMERGENT RELIEF

OAL DKT. NO. EDS 08555-15
AGENCY DKT. NO. 2015-22912

S.B. and J.B. ON BEHALF OF D.B.,

Petitioners,

v.

SUSSEX COUNTY VOCATIONAL BOARD OF EDUCATION,

Respondent.

J.B., appearing on power of attorney, on behalf of **D.B.**

Janet Lucas, Esq., (Weiner, Lesniak) for respondent

Record Closed: June 18, 2015

Decided June 19, 2015

BEFORE **LAURA SANDERS**, Acting Director and Chief ALJ:

This matter arises out of an application for emergent relief filed by petitioners S.B. and J.B. on behalf of their [REDACTED], D.B.¹ S.B. and J.B. filed this petition on June 11, 2015, seeking to prevent the Sussex County Vocational Board of Education from graduating their [REDACTED] on June 19, 2015. Petitioners argue that because a medical illness prevented D.B. from attending school in the second half of the year, [REDACTED] was deprived of

¹ D.B., who is age [REDACTED] signed a general power of attorney granting [REDACTED] mother, S.B. all powers with regard to [REDACTED] decisions. D.B. who was present at the hearing also personally confirmed that [REDACTED] mother's choice of [REDACTED] father to undertake most of the presentation on [REDACTED] behalf.

the opportunity to do the hands-on work which is a prerequisite for a building trades certification. They further argue that the one-on-one home-based instruction that was provided to their [REDACTED] helped [REDACTED] to achieve good grades in the core subjects but that [REDACTED] communication deficits are such that repeating the entire year would be in [REDACTED] best interest.

It is not disputed that D.B. is entitled to special educational services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §1400 et seq. Prior to the problem with the medical illness, D.B. had long been classified as [REDACTED] [REDACTED].

The Office of Special Education Programs (OSEP) transmitted the emergency petition to the Office of Administrative Law (OAL), which filed it on June 11, 2015. On June 18, 2015, oral argument was heard and the record closed. After due consideration of the papers and oral argument received, I **CONCLUDE** that petitioner's request for emergent relief must be **APPROVED**.

The standard for the granting of emergent relief is set forth in N.J.A.C. 6A:3-1.6(b). However, in Drinker v. Colonial School District, 78 F.3d 859 (3d Cir. 1996), the Third Circuit held that a judge should not look at the irreparable harm and likelihood of success factors when analyzing a request for a stay-put order. A parent may invoke the stay-put provision when a school district proposes "a fundamental change in, or elimination of, a basis element of "the current educational placement." Lunceford v. D.C. Bd. Of Educ., 745 F. 1577, 1582 (D.C 1984). The basic language of Section 1415(j) 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, or, if applying for initial admission to a public school, shall with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

N.J.A.C. 6A:14-2.7(u) provides that.

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.

In Cronin v. Bd. of Educ., 689 F.Supp. 197, 203 (S.D.N.Y. 1988), the Southern District of New York held that a school district's decision to graduate a student with an Individualized Educational Plan constituted "a change in placement" that violated the "stay-put" provisions of the IDEA. Cronin was cited approvingly in a recent, unpublished Third Circuit decision, R.B. v. Mastery Charter Sch. 532 Fed. Appx. 136 (3d Cir. 2013). The stay-put provision represents Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placements is ultimately resolved. Drinker at 859. The Third Circuit declared that the language of the stay-put provision is "unequivocal" and "mandated." Drinker at 864. As the federal district court has said in the unpublished decision, B.A.W. v. E. Orange Bd. of Educ., No. 10-4039 (D.N.J. August 31, 2010), §1415(j) operates as "an automatic preliminary injunction." (citing Cronin, supra, 689 F. Supp. at 197-203.)

Here, graduation would constitute a change in educational placement. In fact, the district urges D.B. to avail [REDACTED] of opportunities through the Division of Vocational Rehabilitation, instead of a high school, while [REDACTED] parents contend [REDACTED] is being deprived of critical coursework necessary to complete [REDACTED] high school education. Further, petitioners point out that the district previously suggested [REDACTED] withdraw entirely, rather than complete [REDACTED] senior year with no guarantee of an opportunity to ever complete it. (See, for instance, R-4.) Finally, petitioners contend that because [REDACTED] medical illness has caused [REDACTED] to experience high levels of anxiety, returning to a familiar school with teachers [REDACTED] knows and likes and existing friends is much more likely to allow [REDACTED] to succeed in completing the hands-on work needed rather than facing fresh challenges in an entirely new environment.

Here, in the face of proposed change, an emergent application for relief and due process hearing has been filed on behalf of D.B. Therefore, the filing triggers the procedural safeguards set forth in §1415 of the IDEA, including but not limited to the stay-put provision. 20 U.S.C. 1415(j). As was pointed out in Cronin, simply allowing the vocational technical school to declare an end to services would render the stay-put provision meaningless because the district could unilaterally graduate handicapped children. Cronin, supra., 689 F.Supp. 197, n. 4.

It should be noted that one of the rationales the District had advanced for its position is the lack of certainty as to whether D.B.'s medical condition will improve to the point that ■■■ can once again attend school and handle the tools that are integral to the building trades certification. It notes that it could be in the position of holding a placement for a child who still cannot attend. While a rational concern for a school administrator, that is not part of the IDEA's evaluation of whether a child's individualized needs have been properly met. Of far greater significance, the District points out that D.B. achieved grades in the good to excellent range all year and earned enough credits to graduate, which means that ■■■ did receive appropriate supports and made meaningful progress, such that the District has met its entire obligation to ■■■. Additionally, it argues that not all students graduate with certificates in their proposed field, so the fact that D.B. could not achieve one because of ■■■ inability to physically attend shop class is not of compelling significance. The difficulty is that students attend vocational schools for the purpose of having a trade when they leave school. Here, due to ■■■ illness, D.B. was prevented from undertaking part of the required coursework, and therefore was deprived of the opportunity to complete ■■■ education. This is far different from being provided the opportunity but not meeting the challenge. Thus, forcing graduation would seem to brush aside the IDEA's focus on the particularized needs of disabled students and its goal of providing them with a Free and Appropriate Public Education, which includes equal opportunities to do needed classwork.

Therefore, after hearing the arguments of petitioner and respondent and considering all documents submitted, I **CONCLUDE**, in accordance with the standards

set forth in Drinker v. Colonial School District, that J.B. is entitled to stay-put placement in the Sussex County Technical School, where [REDACTED] was receiving educational services at the time the dispute arose.

ORDER

It is hereby **ORDERED** that the application for emergency relief is **GRANTED** for the reasons noted above.

I further **ORDER** that this decision on application for Emergent Relief shall remain in effect until the issuance of the decision on the merits in this matter.

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.

June 19, 2015

DATE



LAURA SANDERS
Acting Director and Chief
Administrative Law Judge

Date Mailed to Parties:

June 19, 2015

/caa

Witnesses

For petitioners

S.B.

For respondent

Kathleen Finley, Supervisor of Special Services

Exhibits

For petitioners

- P-1 March 6 and March 10 emails between S.B. and Kathleen Finley regarding effect of absences on certificate of completion
- P-2 Letter from parent of high school child describing child's retention in Sussex Technical School because of a diagnosed medical issue
- P-3 Sussex County Technical School District Policy on Promotion and Retention, Effective April 19, 2004
- P-4 Audiotape of IEP meeting of April 15, 2015

For respondent

- R-1 Gradebook Assignments for D.B. (compilation of grades dated June 4, 2015)
- R-2 Individual Education Program dated April 30, 2015
- R-3 Individualized Education Program—Amendment Meeting dated September 22, 2014
- R-4 Letter to S.B. and J.B. from Kathleen Finley dated April 30, 2015
- R-5 Physician note from Jenny A. Blanchard, D.O., placing D.B. on home instruction, received December 17, 2014
- R-6 Letter from Kathleen Finley to Dr. Blanchard, following up on physician's note dated March 2, 2015, requesting D.B. remain on home instruction, seeking clarification on progress/treatment summary

R-7 School Based Youth Services Program Information Authorization form dated January 14, 2015 by J.B. for release of D.B.'s medical information

