

**COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
SPECIAL EDUCATION APPEALS**

In Re: Student v.
Medford Public Schools

BSEA # 1610177

RULING ON PARENT'S MOTION FOR INTERIM PLACEMENT

On June 1, 2016, Parents in the above-referenced matter requested a Hearing. A Pre-hearing Conference was held on July 21, 2016 after which Medford Public Schools (Medford) offered Student an extended evaluation at the Curtis Tufts High School in Medford. According to Medford, Curtis Tufts is a therapeutic program which is part of the Medford Public Schools and is located at a building separate from Medford High School. Parent and Student visited the program in August 2016 and were not convinced that it would be appropriate for Student. Thereafter, on September 9, 2016, Student's psychologist wrote a letter stating that, based on information received from Curtis Tufts High School and Student, the Curtis Tufts placement would not be appropriate for Student. She instead recommended Beacon High School as an appropriate interim placement for Student. Said recommendation led to Parents' advocate filing the instant Motion for Interim Placement, dated September 13, 2016.

On September 13, 2016, Medford Public Schools (Medford) filed an objection to Parents' Motion noting that funding of Beacon High School was not Ssay-put and that such an order from the BSEA could only result from a full evidentiary Hearing. Medford argued that Curtis Tufts was an appropriate setting for purposes of conducting the extended evaluation for Student. Lastly, Medford argued that for purposes of a stay-put Order, Medford High School was the appropriate placement.

On September 14, 2016, Parents filed a response to Medford Public Schools' Objection.

This Ruling takes into consideration earlier, pertinent submissions made by the Parties from which the relevant facts necessary to determine placement pending appeal have been drawn.

FACTS:

The following facts are considered to be true only for purposes of determining Student's placement pending appeal.

1. Student is a sixteen year old resident of Medford, Massachusetts. He has been found eligible to receive special education services due to a health disability, ADHD, but recent evaluations/medical reports suggest additional areas of need.

2. Student attended the McGlynn Middle School in Medford during seventh and eighth grades.
3. In the spring of 2014 Student was referred by his pediatrician for a special education evaluation but the initial 2014 Team did not find him eligible to receive special education services. Parent rejected this finding and requested an independent evaluation.
4. In September 2014, Student entered ninth grade at Medford High School. Upon receiving Student's physician's letter indicating that Student had been diagnosed with ADHD, Medford convened a Team meeting on October 21, 2014. The Team found Student eligible to receive special education services due to a health disability, ADHD. As a result, an IEP offering reading and writing support, transition planning support and counseling was developed and offered but Parent rejected all of the proposed services accepting only placement of Student at Medford High School. Parent also requested additional assessments in the areas of occupational therapy, speech and assistive technology.
5. Student's Team reconvened on January 5, 2015 to review the results of the occupational therapy, speech and assistive technology evaluations. The Team proposed to amend Student's IEP to add math and science services.
6. On February 11, 2015, Parent accepted the amended IEP covering the period from 1/05/2015 to 10/20/2015.
7. Student's Team reconvened on June 23, 2015 to discuss an independent psychological evaluation of Student. The Team did not recommend any changes to Student's IEP.
8. Student passed all of his 9th grade classes and was promoted to tenth grade.
9. In August 2015 Parent informed the guidance office that Student would be transferring to Camden Military Academy in North Carolina. Parent requested a copy of Student's school record and withdrew him from Medford High School.
10. On October 22, 2015, Student re-enrolled at Medford High School. His Team was reconvened on November 20, 2015 and a new IEP covering the period from November 20, 2015 to November 19, 2016 was issued. This IEP called for Student's services to be delivered at Medford High School. Parent partially rejected this IEP and requested a meeting to discuss MCAS accommodations and define a Parent communication plan.
11. Student's Team reconvened on February 24, 2016 during which the MCAS accommodations were reviewed and amended to include access to a computer during MCAS testing. The plan also added a statement regarding bi-weekly communication

with Parent. This plan offered to continue Student's placement at Medford High School. To date Parent has not responded to the proposed amended IEP covering the period from February 24, 2016 to November 19, 2016.

12. According to Parents, Mother withdrew Student from Medford on or about February 26, 2016. Medford continued to contact Parents through March 2016 regarding Student's absences. Parent then met with Medford's Superintendent on or about March 24, 2016. The Medford special education team scheduled a meeting for April 12, 2016 after which Medford continued to contact Parent regarding Student's school absences and on May 2, 2016, Medford noted Student's status as withdrawn.
13. A Mediation Agreement between the Parties, dated May 25, 2016 notes that Student attended Camden Military School in South Carolina during the winter/spring of 2016. Camden Military School is a general education private school.

CONCLUSIONS OF LAW:

Federal and Massachusetts special education laws provide that students are entitled to remain in their then-current educational program and placement during the pendency of any dispute unless the parents and the school district agree otherwise. 20 USC §1415(j); 34 CFR 300.518(a); G.L. c.71B §3; 603 CMR 28.08(7).¹ This right is commonly known as "stay-put".

The purpose of stay-put is to maintain a student's educational situation during the pendency of an IDEA appeal, so as not to disrupt the student's life unnecessarily. In this sense, "current educational placement" is equivalent to "the operative placement actually functioning at the time the dispute first arises". *L.Y. ex rel. J.Y. v. Bayonne Bd. of Educ.*, 384 Fed. Appx. 58, 61, 20110 WL 2340176, *2 (3rd Cir. 2010) (quoting *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625-26 (6th Cir.) 1990).

Generally, a student's placement is predicated upon the accepted IEP, the document which dictates the school district's responsibility toward a resident student. Similarly, one must also look at the last agreed upon IEP in determining the program and placement to which a student is entitled during the pendency of a proceeding. A stay-put determination requires careful examination of the particular facts and circumstances surrounding the program and placement to which the student is entitled during the pendency of a dispute. See *Hale v. Poplar Bluff R-1 School District*, 280 F.3d 831 (8th Cir. 2002) (calling for the fact finder to inquire as to the specific facts of the case to examine the impact that educational changes may have on the student).

In the case at bar, Parents have rejected Medford's offer of conducting an extended evaluation at Curtis Tufts, and instead request that Student's extended evaluation be

¹ Exceptions to stay-put which relate to violations of the code of conduct are not applicable in this matter.

conducted at a school such as Beacon High School. It is evident that there is no meeting of the minds between the Parties and as such, I am called upon to enter a determination regarding Student's stay-put rights. While Parents' substantive arguments regarding the appropriateness of Beacon High School may be persuasive at a Hearing on the merits, a determination of stay-put, involves a much narrower analysis of the facts and circumstances surrounding Student's program and placement at the time the dispute arose.

The evidence shows that Student was receiving special education services at Medford High School under the IEP accepted by Parents on February 11, 2015. Thereafter, according to Parents, following a Team meeting in February 2016, Parents did not accept any other IEPs and Student was withdrawn from Medford.²

Parents' Amended Hearing Request dated June 15, 2016, alludes to confusion on Medford's part regarding Student's withdrawal from Medford post February 2016. Furthermore, the record lacks any indication that upon withdrawing Student from Medford, Parents also withdrew him from special education, or that the necessary notices regarding withdrawal from special education were forwarded by Medford's Special Education Department. Therefore, I must assume that this last event did not occur. As such, Student reentered Medford as a special education student entitled to placement at Medford High School consistent with his last agreed upon IEP of February 2015. Assuming *arguendo*, that Parents intended and indeed withdrew him from special education and not just from Medford, then Student's re-entry into Medford would be as a general education student; as stated earlier, the record lacks this information.

Parents seek an order from the BSEA placing Student at Beacon High School as an interim placement. This request would upset the status quo during the pendency of the dispute as it is equivalent to a change in placement request not permissible without a full Hearing on the merits, or absent the Parties' agreement. For purposes of stay-put, at this time, Student is not entitled to a placement at Beacon High School or any other similar placement outside Medford. Until Student's Team meets, continues his eligibility to receive special education services, makes new recommendations, offers Student a new IEP, or absent a full evidentiary Hearing is held to ascertain the appropriateness of Medford's proposed IEP, Student is not entitled to a change in placement. Under stay-put, he only has a right to receive his education in Medford High School.

Lastly, I note that the psychologist's letter submitted by Parents may be a relevant exhibit at Hearing but it has no bearing on a stay-put determination. The Parties may request an advancement of the Hearing if they believe that the currently scheduled Hearing dates may cause harm to Student. However, barring a different agreement between the Parties, during

² A Mediation Agreement dated May 25, 2016 notes that Student attended Camden Military School in South Carolina during the winter/spring of 2016, presumably after having being withdrawn from Medford on or about February 2016.

the pendency of any dispute before the BSEA Student is entitled to receive his education at Medford High School.

Parent's request for a determination that Student's interim placement should be Beacon High School is DENIED.

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: September 16, 2016