

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

**BUREAU OF SPECIAL EDUCATION APPEALS**

---

Student

&

BSEA No. 1800182

Concord & Natick Public Schools

---

**CORRECTED RULING ON MOTHER’S REQUEST FOR “STAY PUT” ORDER**

*The original Ruling on the above-entitled Request, issued on August 24, 2017 directed to the parties, on Page 5, to “provide the Hearing Officer with a joint status report with several mutually-agreeable dates for a three-day hearing on the merits during September and October 2017.” Because dates for a pre-hearing conference and a hearing had been scheduled previously, this Corrected Ruling substitutes notification of those previously scheduled dates for the order for a joint status report. In all other respects, the Ruling on Mother’s Request for “Stay Put” Order remains unchanged.*

In the instant case, the Natick and Concord Public Schools, which share fiscal and programmatic responsibility for the Student’s special education services, proposed changing Student’s placement for the 2017-2018 school year from a private special education day school to a public collaborative program. One Parent (Father) consented to the proposed change. The second Parent (Mother) refused the proposed placement and filed the instant hearing request. Parents live separately, but have shared legal custody. Mother filed a *Request for a “Stay Put” to Maintain the Status Quo (“Request”)*, seeking to maintain the child’s private school placement during the pendency of this matter before the BSEA. Father and both school districts oppose Mother’s *Request* arguing that only one Parent’s consent is necessary to effectuate the change in placement.

**PROCEDURAL HISTORY**

On July 11, 2017 Mother filed the above-numbered hearing request in which she contested the proposal of the Natick and Concord Public Schools to change Student’s special education placement for the 2017-18 school year from a private day school, “A” in [ ] MA to a public collaborative setting, the “B” program in [ ], MA. On July 21, 2017 Mother filed the *Request* for a stay-put order that is the subject of this *Ruling*. On July 25, 2017 the Natick and Concord

Public Schools (“Districts” or “Schools”) filed a joint *Opposition* to Mother’s *Request*. Father filed his *Opposition* to the *Request* on July 26, 2017.

On August 9, 2017 the parties and hearing officer participated in a conference call, during which the parties argued their respective positions on the *Request*. Subsequently, on August 16, 2017, Mother filed a *Reply Memorandum* in support of her “stay put” *Request*. The Districts and Father filed oppositions thereto on August 18, 2017. On August 21, 2017 Mother and the Districts each filed supplemental memoranda in support of their respective positions.

### **FACTUAL SUMMARY**

For purposes of this *Ruling*, the following factual statements appear to be undisputed.

1. Student is a twelve-year-old rising sixth grader who is eligible for special education and related services because of [ ].
2. Student’s Parents live separately and have joint legal custody of Student, who divides his time between Mother’s home in Natick and Father’s home in Concord. Natick and Concord have assumed joint programmatic and fiscal responsibility for Student’s special education programming.
3. Pursuant to successive IEPs issued by the two Districts and accepted by Parents, Student has spent his entire educational career, from the age of 3 through fifth grade (2016-17 school year and summer 2017) at [A], which is a state-approved private special education day school for [ ] located in [ ] MA,.
4. In May 2017, the Districts issued an IEP for sixth grade (2017-18 school year) that proposed changing Student’s placement from [A] to the [B] Program, a public collaborative program located within the [ ] Middle School in [ ], MA. On June 30, 2017 Father accepted the proposed [B] placement. On July 6, 2017, Mother rejected the [B] placement. The placement is scheduled to start in or about September 2017.

### **ISSUES PRESENTED**

At issue is whether the “stay put” doctrine applies when one parent (here, Father) consents to a proposed change in placement and the other parent (Mother) objects to the change.

### **POSITION OF MOTHER**

The undisputed purpose of the “stay put” doctrine, under both federal and state law, is to ensure the stability of a child’s placement while parents and schools resolve placement disputes. To require Student, over Mother’s objection, to leave the only educational setting he has ever known, and in which he is still

participating, would undermine this purpose. Further, as noted in prior BSEA decisions, the applicable statutory and regulatory language clearly requires children to stay in their then-current educational placements unless both parents consent to a change in placement. Thus, Father’s consent to the change in placement in this case cannot extinguish Mother’s right to invoke “stay put.”

## POSITION OF DISTRICTS AND FATHER

The relevant statutory language and longstanding BSEA precedent dictate that only one parent’s consent is required to effectuate a change in an IEP and/or placement, and thereby obligate a school district to implement the consented-to change. Such consent creates a new “status quo.” In the instant case, that new status quo is [B], based on Father’s consent, and “stay put” is no longer available to keep Student at [A]. Mother may seek Student’s return to [A] in the pending BSEA proceeding, but she cannot apply the “stay put” doctrine to block implementation of an accepted change in placement.

## DISCUSSION

The “stay put” rule is a fundamental procedural protection afforded parents and students by the IDEA and the Massachusetts special education statute, G.L. c. 71B. “Stay put” means that during the time that parent and school district are engaged in the IDEA dispute resolution process, “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...” 20 U.S.C. Sec 1415(j); 34 CFR Sec. 300.514; *Honig v. Doe*, 484 U.S. 305 (1988); *Verhoven v. Brunswick School Committee*, 207 F.3d 1, 10 (1<sup>st</sup> Cir. 1999); *M.R. and J.R. v. Ridley School District*, 744 F.3d 112 (3d Cir. 2014); M.G.L. c. 71B; 603 CMR 28.08(7); *In Re: Abington Public Schools*, 20 MSER 198 (Figueroa, 2014); *In Re Framingham Public Schools and Quin*, 22 MSER 12 (Reichbach, 2016). The purpose of “stay put” is to protect students from unilateral changes in placement by school districts and to reflect the preference of Congress for maintaining the stability of a disabled child’s placement and minimizing disruption to the child while the parents and school are resolving disputes. *Verhoven, Ridley, Abington, Framingham, supra*.<sup>1</sup>

What constitutes a child’s “then current placement” is not always self-evident. Not every alteration in a child’s educational services constitutes a change in such placement. Neither the IDEA nor its implementing regulations defines the term “then current placement” or provides an exhaustive list of circumstances that do or do not constitute a change triggering “stay put” protection. *Id.* Neither the

---

<sup>1</sup> Even if there is no formal mediation or due process hearing pending, the “stay put” principle precludes schools (with certain exceptions not relevant here) from unilaterally changing a child’s placement during the term of an accepted IEP. Any such change is a violation of “stay put” unless the parties “otherwise agree” via the IEP process or other valid agreement. See *Honig v. Doe, Framingham Public Schools, supra*.

First Circuit nor other courts has provided an unequivocal definition of the term. Rather, when courts throughout the country have addressed this issue, they have done so in a highly individualized and fact-intensive way. *Hale ex rel. Hale v. Poplar Bluff R-1 School District*, 280 F.3d 831, 834 (8<sup>th</sup> Cir. 2002).

Several general principles guide most such court decisions, two of which are most applicable in this case. First, since the purpose of “stay put” is to preserve the *status quo*, courts look for the “operative placement” or IEP that is “actually functioning at the time the dispute first arises.” *Drinker*, 78 F.3d at 867; *Thomas v. Cincinnati Bd. of Education*, 918 F.2d 618, 626 (6<sup>th</sup> Cir., 1990). Second, more recent decisions in other circuits examine the impact of the proposed change on the student. See, for example, in *AW. v. Fairfax County School Board*, 41 IDELR 119 (4<sup>th</sup> Cir. 2004), *Hale v. Poplar Bluff R-1 School District*, *supra*. Recent BSEA decisions and rulings also have applied these principles to identify the “operative placement” as well as to examine the impact on the student of the proposed change. See, for example, *Abington*, *supra*; *In Re Agawam Public Schools and Melmark-New England*, 21 MSER 81 (Berman, 2015).

In the instant case I am required to identify Student’s “stay put” placement. Father and the Districts assert that Student’s “current”—and, therefore, “stay put”—educational placement became [B] as soon as Father consented to that placement. Under this line of reasoning, “stay put” at [A] is unavailable to Mother because [A] is no longer “current,” having been superseded by an agreed-upon placement at [B]. Rather, the Districts must implement the IEP and placement accepted by Father, and Mother has the right to contest the appropriateness of the disputed placement at a hearing on the merits before the BSEA. If she prevails, the hearing officer could order Student’s return to [A]. To support their position, Father and the Districts point to regulatory language and prior BSEA decisions stating that the consent of only one parent is sufficient to enable—indeed, require—school districts to implement an IEP and placement.

There is no question that as a general rule, the most recently-accepted IEP, whether it is signed by one or both parents, must be implemented by a school district. Significantly, in the case before me, that IEP, although accepted, has never been implemented, and is not scheduled for implementation until the beginning of the 2017-18 academic year.<sup>2</sup> When determining Student’s “stay put” placement in the instant case, I must look not only at the four corners of the

---

<sup>2</sup> Father and the Districts cite to *Arlington Public Schools*, 7 MSER 270 (Crane, 2001) for the proposition that only one parent’s consent is required to implement an IEP and placement. The facts in *Arlington* were different from those in the instant case, however. First, unlike the scenario in the instant case, the placement to which one parent objected had already been implemented. Parent had not invoked “stay put” to prevent that placement; rather, she sought to return the child to her previous setting because she felt the other parent lacked authority to consent to it. Significantly, even though the “stay put” rule was never raised or addressed in the *Arlington* case, Hearing Officer Crane expressly declined to remove the child from the placement where she was actually receiving services prior to a hearing on the merits, stating it would not be “in Student’s best interests” to do so.

accepted IEP, but also at the “operative placement” that was “actually functioning” at the time the dispute arose, that is, “the operative placement under which the child is actually receiving instruction,” in order to effectuate the purpose of “stay put,” by maintaining the stability of Student’s educational life while a dispute is pending. *Abington, supra, citing Thomas, supra*. Here, the “operative placement” is [A], because it is the only placement under which Student has “actually receiv[ed] instruction,” and, indeed has continued to receive instruction during the summer of 2017. *Id.* Maintenance of this placement pending appeal is necessary to minimize disruption to Student’s educational life. If Student remains at [A] pending appeal and Mother prevails on the merits of her hearing request, there would be no change in Student’s placement. If Mother does not prevail, then an order could be crafted providing for a structured, supportive transition to [B]. On the other hand, if Student begins the school year at [B] and Mother prevails at hearing, Student would be subject to a second change in placement. Such a scenario would be contrary to the purposes of “stay put.”<sup>3</sup>

### ORDER

Based on the foregoing, Student’s placement pending appeal is [A] in [ ]. As previously agreed by the parties, a pre-hearing conference is scheduled for September 18, 2017 at 1:15 PM and a hearing is scheduled for October 23, 24, and 25, 2017. Both the pre-hearing conference and hearing will take place at the office of the BSEA, One Congress Street, Boston, MA. The BSEA will issue a separate Notice of Pre-Hearing Conference and Hearing.

By the Hearing Officer:

---

Sara Berman  
Dated: August 28, 2017

---

<sup>3</sup> In light of the foregoing analysis, it is not necessary to examine the significance of the use of the plural term “parents” in the federal and state provisions governing “stay put,” 20 USC §1415, 34 CFR 300.518(a); MGL c. 71B§3; 603 CMR 28.08(7).