

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

---

**IN RE: STUDENT V.  
READING PUBLIC SCHOOLS**

---

**BSEA # 2008819**

**RULING ON PARENT’S EXPEDITED MOTION AND PRE-TRIAL HEARING  
REQUEST FOR STAY-PUT PROVISION PRELIMINARY INJUNCTION RELIEF  
DURING PROCEEDINGS**

This *Ruling* addresses Parent’s *Expedited Motion and Pretrial Hearing for Stay Put Provision Preliminary Injunction Relief during Proceedings*. On June 19, 2020, Parent<sup>1</sup> filed a *Hearing Request* asserting, in part, a denial of FAPE by the Reading Public Schools (District). The matter was initially assigned to Hearing Officer Lindsay Byrne. At the District’s request and for good cause, the Hearing was rescheduled for November 6, 2020. Due to administrative reasons, on or about October 26, 2020, the matter was reassigned to Hearing Officer Catherine Putney-Yaceshyn. On October 29, 2020, at the Parties’ request, the Hearing was postponed again to December 22, 2020, January 12, 2021, and January 29, 2021. Following a pre-hearing conference on November 6, 2020, the Parties again requested to postpone the Hearing to January 26, 2021, January 28, 2021, January 29, 2021 and February 4, 2021. On or about December 17, 2020, the matter was reassigned to Hearing Officer Alina Kantor Nir.

On November 18, 2020, Parent filed an *Expedited Motion and Pretrial Hearing for Stay-Put Provision Preliminary Injunction Relief during Proceedings (Motion)* in which she asserts that while Student “waits for his Due Process Hearing scheduled for the end of January 2021, the school District must follow the stay-put rule and provision ... until the case is resolved and provide him with an appropriate special education and appropriate placement that includes receiving Bridge Special Education Services.” Parent furthermore seeks an “immediate preliminary injunction” and requests that the District be required to:

1. Provide [Student] with appropriate Bridge Special Education Services and placement that includes grade level state standard contents, courses of study and curriculum that is challenging, purposeful and

---

<sup>1</sup> Although Student has reached the age of majority, the available record suggests that he delegated decision-making authority to Parent on November 18, 2019.

- rigorous to meet [Student's] unique and remedial needs, his academic and functional needs, and other areas of weaknesses and deficits identified in his IEP while he awaits his due process hearing.
2. Present [Student] with appropriate (non-repeated) course(s) of study and content.
  3. Provide [Student] with *intensive remediation and instruction* using language-based methodologies in ELA, Math, Specialized Reading Instruction and History as promised to him as a student who receives Bridge Special Education Services.
  4. Provide [Student] ELA, Math, Specialized Reading instruction methodologies that are peer reviewed and scientifically based ....
  5. Provide appropriate services that address [Student's] Executive Functioning needs that are identified in his IEP.
  6. Conduct an IEP Team meeting as requested by [Parent]....
  7. Provide written clarification of the "Stay-Put" provision without delay with regard to [Student] and his IEP....
  8. Follow all principles, procedures, provisions, requirements and statutes as mandated by the IDEA during these proceedings, including but not limited to the Stay-Put provision of the Act.

(*Motion*). On November 25, 2020, the District filed its *Opposition to the Parent's "Expedited" Motion for Placement Pending Appeal and Preliminary Injunction Relief* asserting that Parent "seeks eight (8) separate points of relief that amount to a request for the District to develop a new IEP for the Student even though the Student has appropriately graduated from high school." The District further alleges that that "the District has, at all times, offered to implement the Student's last accepted IEP; however, the Parent and Student have chosen not to access any of the stay-put services offered by the District."

On November 30, 2020, Parent filed a *Reply to Response to Motion for Expedited Motion and Pre-Trial Hearing Request for Stay-Put Provision Preliminary Injunction Relief during Proceedings*, asserting that the relief requested by Parent is "based on [Student's] last accepted" IEP. Parent further alleges that she is "not asking for a temporary change in placement or for [Student's] IEP to be modified. We are requesting that the District [be] required to provide [Student] appropriate education based on his actual IEP services and components that are protected by the Pendency 'Stay-Put' provision that will include non-repeat courses of study and curriculum and appropriate intensive remediation and instruction as promised by his placement in Bridge Special Education Services Program."

Since neither party requested a hearing on the *Motion*, and as testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved, this Ruling is being issued without a hearing pursuant to *Bureau of Special Education Appeals Hearing Rule VII(D)*. For the reasons set forth below, Parent's *Motion* is **DENIED, in part**. Specifically, Parent's request for expedited status for the *Motion* is **DENIED**. To the extent that Parent's *Motion* seeks a temporary change in placement for Student, or preliminary injunctive relief, such request is also **DENIED**. Furthermore, although I agree that Student is entitled to the stay-put

implementation of his last accepted IEP and placement, the specifics thereof are delineated below in this *Ruling*.

## LEGAL FRAMEWORK

### *1. Expedited Motion Status and Preliminary Injunction Relief.*

The BSEA allows for expedited hearings only in situations where a) a parent disagrees with a school district's determination that the behavior leading to discipline was not a manifestation of the student's disability; b) a parent disagrees with a school district's decision regarding a student's placement in the discipline context; or c) a school district asserts that maintaining the current placement of the student during the pendency of due process proceedings is substantially likely to result in injury to the student or others. *See BSEA Hearing Rules, RULE II C.* BSEA hearings may be assigned accelerated status when a) the health or safety of the student or others would be endangered by the delay; b) the special education services the student is currently receiving are sufficiently inadequate such that harm to the student is likely; or c) the student is currently without an available educational program or the student's program will be terminated or interrupted immediately. *See BSEA Hearing Rules, RULE II D.*

In addition, the Massachusetts Special Education Regulations dictate that although during the pendency of any dispute, the student must remain in his or her then current education program and placement, a Hearing Officer may order a temporary change in placement "for reasons consistent with federal law, including but not limited to when maintaining such student in the current placement is substantially likely to result in injury to the student or others." 603 CMR 28.08(7)(c). "[A]ny party seeking to change the eligible student's placement during the pendency of proceedings before the Bureau of Special Education Appeals or in subsequent judicial proceedings shall seek a preliminary injunction from a state or federal court of competent jurisdiction, ordering such a change in placement." 603 CMR 28.08(7)(d).

### *2. Stay-Put Provision.*

The IDEA's "stay-put" provision requires that unless the State or local educational agency and the parents otherwise agree, during the time that a parent and school district are engaged in an IDEA dispute resolution process, "the child shall remain in the then-current educational placement of the child..." 20 U.S.C. §1415(j); 34 CFR §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 (2014); *In Re: Framingham Public Schools and Quin*, BSEA #1605247, 22 MSER 12 (2016). To determine a child's "stay put" placement, courts look to the IEP that is "actually functioning at the time the dispute first arises." *Drinker v. Colonial School District*, 73 F.3d 859, 867 (3<sup>rd</sup> Cir. 1996). Preservation of the "status quo" assures that the student "stays-put" in the last placement the parents and the local education agency (LEA) agreed was appropriate for him. *See Doe v. Brookline School Committee*, 722 F.2d 910 (1<sup>st</sup> Cir. 1983). In addition, the stay-put provision reflects "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.” *Student & Concord & Natick Public Schools*, BSEA # 18-00182, 23 MSER 210 (2017) (*Corrected Ruling on Mother’s Request for “Stay-Put” Order*).

Recent decisions in other circuits and at the BSEA focus on the impact of the proposed change on the student. *See AW. v. Fairfax County School Board*, 41 IDELR 119 (4<sup>th</sup> Cir. 2004); *In Re Agawam Public Schools and Melmark-New England*, BSEA #1504488, 21 MSER 81 (2015). Generally, the educational impact must be substantial. *See, e.g., A.W. v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674 (4th Cir. 2004) (finding that “where a change in location results in a dilution of the quality of a student’s education . . . a change in educational placement occurs”); *Tennessee Dep’t of Mental Health v. Paul B.*, 88 F.3d 1466 (6th Cir. 1996) (finding that a court “must identify a detrimental change in the elements of an educational program in order for a chance to qualify for the stay-put provision”); *DeLeon v. Susquehanna Community Sch. Dist.*, 747 F.2d 149, 153-54 (3rd Cir. 1984) (holding that a “touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child’s learning experience”). Several courts have assessed whether “a fundamental change in, or elimination of, a basic element of the educational program” has occurred. *See Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992); *see also, Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C.Cir. 1984); *Mr. C. v. Maine Sch. Admin. Dist. No. 6*, 2007 WL 4206166 (D.Me. 2007); *In Re: Leominster Public Schools*, BSEA # 12-7450, 18 MSER 265 (2012) (finding that because of the significant reduction of time in services, the proposed placement results in such a substantial change in educational programming as to violate the student’s stay-put rights).

### 3. *Stay-Put as to Location versus Program.*

Although neither the IDEA nor the Part B regulations define the term "current educational placement," most courts have interpreted the term to mean the type of program the student is receiving as opposed to a specific school or classroom. *See, e.g., N.D. v. State of Hawaii, Dep't of Educ.*, 54 IDELR 111 (9th Cir. 2010) (holding that a change in placement occurs when a student is moved to a different type of program or when there is a significant alteration of the student's program even though he stays in the same setting); *AW v. Fairfax County Sch. Bd.*, 41 IDELR 119 (4th Cir. 2004) (finding that a Virginia district's decision to transfer a gifted student with an emotional disability to a similar gifted and talented program at another school didn't violate the IDEA's stay-put provision). As used in the stay-put provision, the word "current" generally means the placement and services that are in effect when the parents file their due process complaint, and in most instances, these services will be found in the student's most recently implemented IEP. *See, e.g., John M. v. Board of Educ. of the Evanston Twp. High Sch. Dist. No. 202*, 48 IDELR 177 (7th Cir. 2007) (holding that the IDEA's stay-put provision does not apply to services provided outside of an IEP). Similarly, BSEA decisions have suggested that “the ‘stay-put’ right does not necessarily ensure staying at the same location, but rather, ensures the same program and kind of placement - that, potentially, can be provided at a different location.” *In re: Falmouth Public Schools, the Cotting School, and Susan*, BSEA #05-1581, 10 MSER 496 (2004) (referring to federal commentary, volume 64 of the federal register at page 12616); *see also See In Re: Georgetown Public Schools and Landmark School*, BSEA #1408733, 20 MSER 169 (2014).

#### 4. *Stay-Put Provision and Graduation.*

Pursuant to the IDEA and Massachusetts special education law, eligibility for special education services expires when an eligible student receives his/her high school diploma, or when the student turns twenty-two years old, if (s)he has not previously received a diploma or equivalent. *See* 20 USC §1412(a)(1)(A); MGL c. 71B, §§1 and 3; *see also Nauset Pub. Schs.*, 116 LRP 12351 (SEA MA 03/23/16) (concluding that because graduation represents an end to special education services, it requires prior written notice). Although achievement of IEP goals is not a prerequisite for award of a regular high school diploma, the student's IEP must be calculated to provide the student with an educational benefit, and the student must have made progress towards the goals set forth in his/her IEP. *See Doe v. Marlborough Pub. Schs.*, 54 IDELR 283 (D. Mass. 2010). Even when a student with a disability has met local graduation requirements, Massachusetts courts have opined that a district may not properly graduate a student if he was not provided FAPE. *See, e.g., Nauset Pub. Schs.*, 116 LRP 12351 (SEA MA 03/23/16); and *Doe v. Marlborough Pub. Schs.*, 54 IDELR 283 (D. Mass. 2010).

When a student with a disability challenge his/her graduation through a due process hearing, the responsible school district must maintain the student's current placement until the dispute is resolved. *See R.Y. v. State of Hawaii, Dep't of Educ.*, 54 IDELR 4 (D. Hawaii 2010) (holding that the school's decision to graduate 20-year-old student while dispute over her graduation was pending amounted to stay-put violation); *Kevin T. v. Elmhurst Cmty. Sch. Dist. No. 205*, 34 IDELR 202 (N.D. Ill. 2001) (finding that during an ongoing dispute over graduation, the student was entitled to remain at his current placement in accordance with stay-put protections); *B.A.W. v. East Orange Bd. of Educ.*, 55 IDELR 76 (D.N.J. 2010, *unpublished*) (ordering the district to reinstate a 19-year-old student to his private school while the student challenged his receipt of a state-issued diploma); *In Re: Blue Hills Regional Technical High School*, BSEA # 2008213, 26 MSER 127 (2020) (finding that where parents initiated BSEA action prior to the expiration of the rejected IEP and the award of a diploma, they invoked stay-put rights and preserved their procedural and substantive rights to address the FAPE allegations).

## CONCLUSION

### 1. *Expedited Motion Status and Preliminary Injunction Relief.*

In the instant case, Parent fails to offer any evidence in support of either an expedited motion hearing or a preliminary injunction. On its face, Parent's *Motion* meets neither the expedited nor the accelerated requirements of the *BSEA Hearing Rules*. Specifically, while Parent disputes the appropriateness of the services currently offered by the District, this Appeal is not a disciplinary matter, nor is there any evidence that suggests that a) the health or safety of the student or others would be endangered by the delay; that b) the special education services the student is currently receiving are sufficiently inadequate such that harm to the student is likely; or that c) the student is currently without an available educational program or the student's program will be terminated or interrupted immediately. *See BSEA Hearing Rules*, RULES II C and D. In addition, although the Massachusetts Special Education Regulations allow a Hearing Officer to "order a temporary change in placement of an eligible student for reasons consistent with federal law, including but not limited to when maintaining such student in the current placement is substantially likely to

result in injury to the student or others,” I decline to do so in the instant matter as no evidence has been provided to suggest that a delay would result injury or harm to Student or others. *See* 603 CMR 28.08(7)(c).

As such, expedited status for the *Motion* is **DENIED**. To the extent that Parent’s *Motion* seeks a temporary change in placement for Student, or preliminary injunctive relief, such request is also **DENIED**.

2. *Student’s Stay-Put.*

a. *Stay-Put Placement.*

In the instant case, Student has been attending the Bridge Program, a substantially separate program at Reading Memorial High School, since June 2016. On February 29, 2020, in response to the IEP dated 1/16/2020-5/14/2020, Parent accepted placement at the Bridge Program. Subsequently, on May 11, 2020, in response to an IEP dated 5/15/2020-6/7/2020, Parent rejected said placement. As such, Student’s last accepted placement is the Bridge Program, a substantially separate program at the Reading Memorial High School.

b. *Stay-Put Services*

In her *Motion* and *Reply to Response to Motion*, Parent disputes that the services currently offered by the District are appropriate and requests, as part of her interim relief, that the District be ordered to provide Student with “appropriate” services. (*Motion* and *Reply to Response*). However, “appropriateness” is not the legally mandated standard for stay-put programming. Rather, provision of services that preserve the status quo and placement in the last program that parent and the district agreed was appropriate for Student will, by definition, generally fulfill the stay-put requirement.<sup>2</sup> Accordingly, in order to define the stay-put services to which Student is entitled during the pendency of this Appeal, this Hearing Officer must identify the Student’s “actually functioning” IEP at the time that the present dispute arose. *See Doe v. Brookline School Committee*, 722 F.2d 910 (1<sup>st</sup> Cir. 1983). Parent filed a Hearing Request in this matter on June 19, 2020. Prior to filing, on May 11, 2020, Parent rejected several portions of IEP dated

---

<sup>2</sup> There may be individual situations, however, in which hearing officer intervention with respect to long-term placement pending appeal in an inappropriate placement may be warranted. *See In re: Canton Public Schools*, 23 IDELR 1229 (December 19, 1995) (where the last IEP was no longer appropriate, the hearing officer chose the appropriate interim placement). In other words, 20 U.S.C. § 1415(e)(3) “was designed to guarantee a coherent educational experience for the disabled child until the conclusion of review of contested individualized education programs by establishing a strong preference, but not a statutory duty, for maintenance of the status quo.” *In re: Canton Public Schools*, 23 IDELR 1229 (December 19, 1995) (finding that congress did not intend “to freeze an arguably inappropriate placement and program for the three to five years of review proceedings. To construe (e)(3) in this manner would thwart the express central goal of this Act: provision of a free, appropriate education to disabled children”). Nevertheless, there is no evidence before me in the instant case to suggest that Student’s stay-put placement is inappropriate.

5/15/2020-6/7/2020.<sup>3</sup> In part, Parent rejected Goals #1-5 (Reading Comprehension, Reading Decoding, Written Language, Executive Functioning, and Mathematics, respectively). She also rejected 1) “removing Small Group History” from the Service Delivery Grid (C Grid); 2) Inclusion Science Service Delivery Grid (B Grid); and 3) the provision of Reading Instruction by a paraprofessional (C Grid).

As such, Student’s stay-put entitlement is as follows:

*a. Goals.*

Because Parent rejected all goals in IEP dated 5/15/2020-6/7/2020, the stay-put goals for Student are those identified as Goals #1-5 (Reading Comprehension, Reading Decoding, Written Language, Executive Functioning, and Mathematics, respectively) in IEP dated 1/16/2020-5/14/2020.

*b. Accommodations and Specially Designed Instruction.*

Parent appears to have accepted (or, at least, not rejected) the accommodations and specially designed instruction identified in PLEPs A and B of IEP dated 5/15/2020-6/7/2020. As such, Student has stay-put rights to said accommodations and specially designed instruction as indicated on IEP dated 5/15/2020-6/7/2020.

*c. Services.*

On May 11, 2020, Parent accepted (or, at least, did not reject) the Consultation Services identified on the A Grid of the Service Delivery Grid of the IEP dated 5/15/2020-6/7/2020. As such, Student has stay-put rights to Consultation services (A Grid, Special Education Teacher, General Education Teacher and Paraprofessional, 1x15min/cycle).

On May 11, 2020, Parent rejected Inclusion Science in the B Grid of the Service Delivery Grid of the IEP dated 5/15/2020-6/7/2020. Therefore, in order to establish stay-put services in science, I turn to the last IEP in which Parent accepted science services; specifically, on October 2, 2017, Parent accepted Inclusion Science (B Grid) pursuant to an IEP dated 9/6/2017-6/13/2018. Accordingly, Student is entitled to stay-put Inclusion Science (B Grid, Special Education Teacher/Paraprofessional, 6x56/7 day cycle).

Also on May 11, 2020, Parent rejected the removal of Small Group History from the C Grid of the Service Delivery Grid of the IEP dated 5/15/2020-6/7/2020. However, in examining the IEP dated 5/15/2020-6/7/2020, I find that Small Group History has not been removed. As such, Student continues to have stay-put rights to Small Group History (C Grid, Special Education Teacher, 6x56 mins/cycle). Because Small Group English Language Arts (C Grid, Special Education Teacher, 6x56/cycle), Small Group Mathematics (C Grid, Special Education Teacher,

---

<sup>3</sup> Based on the IEP submitted with the District’s *Opposition to the Parent and Student’s Expedited Motion for Stay-Put and Preliminary Injunction*, the IEP meeting was held on April 30, 2020, but the IEP is dated 5/15/2020-6/7/2020. The District representative signed the proposed IEP on May 8, 2020, and Parent responded thereto on May 11, 2020.

6x56/cycle), and Academic Support (C Grid, Special Education Teacher/Paraprofessional, 6x56/cycle) have not been rejected, they are deemed accepted. Student, therefore, continues to have stay-put rights to these services.

Last, the IEP dated 5/15/2020-6/7/2020 proposed Specialized Reading (C Grid, Special Education Teacher/Paraprofessional, 6x56/cycle), but, on May 11, 2020, Parent rejected the provision of Specialized Reading by the paraprofessional. Again, in order to assess Student's stay-put services in reading, I turn to the last accepted reading services. On August 10, 2015, Parent accepted Structured Reading 1:1 (C Grid, Special Education Teacher/Paraprofessional, 6x48/cycle) pursuant to IEP dated 6/11/2015-6/10/2016. Subsequently, in an IEP dated 6/23/2016-6/22/2017, the District proposed Reading (C Grid, Special Education Teacher, 3x56). On, July 29, 2016, Parent responded rejecting "the Reading Services 3x56" and indicating that "a [s]tay is needed for the 6x48 min." Therefore, at that time, Student maintained stay-put rights to the previously accepted service of Structured Reading with a Special Education Teacher/Paraprofessional (6x48/cycle).

Subsequently, in an IEP dated 9/6/2017-6/13/2018, the District again proposed Reading (C Grid, Special Education Teacher, 3x56). On October 2, 2017, Parent responded that "Specialized Reading Needs to STAY at 6x56." However, Student was never offered Specialized Reading with a Special Education Teacher 6x56/cycle. As such, Student has no entitlement to stay-put reading services with a special education teacher at such frequency and duration. Instead, the last accepted reading services for Student consisted of C Grid services with a special education teacher/paraprofessional, 6x48 min/cycle. Therefore, Student is entitled to stay-put rights in Specialized Reading (C Grid, Special Education Teacher/Paraprofessional, 6x48/cycle).

## ORDER

Parent's *Motion* is **DENIED, in part**. Specifically, Parent's request for expedited status for the *Motion* is **DENIED**. To the extent that Parent's *Motion* seeks a temporary change in placement for Student, or preliminary injunctive relief, such request is also **DENIED**. Furthermore, during the pendency of this Appeal, Student is entitled to the following stay-put placement and services:

1. Student's stay-put placement is the Bridge Program, a substantially separate program at the Reading Memorial High School.
2. Furthermore, during the pendency of this dispute, the District shall provide Student with the following stay-put services:
  - a. A Grid:  
Consultation - Special Education Teacher, General Education Teacher and Paraprofessional (1x15min/7 day cycle).
  - b. B Grid:  
Inclusion Science - Special Education Teacher /Paraprofessional (6x56/7 day cycle)

- c. C Grid:  
Specialized Reading - Special Education Teacher/Paraprofessional (6x48/7 day cycle)  
Small Group History- Special Education Teacher (6x56/7 day cycle)  
Small Group ELA- Special Education Teacher (6x56/7 day cycle)  
Small Group Mathematics - Special Education Teacher (6x56/7 day cycle)  
Academic Support - Special Education Teacher/Paraprofessional (6x56/7 day cycle)

By the Hearing Officer,

/s/ Aina K. Anter Nir

Date: December 22, 2020