

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

IN RE: STUDENT V.

HAMPSHIRE REGIONAL SCHOOL DISTRICT

BSEA # 2103975

RULING ON PARENTS' MOTION TO ENFORCE STAY-PUT

This matter comes before the Hearing Officer on Parents' *Motion to Enforce Stay-Put*, which was filed with the BSEA on December 2, 2020. Hampshire Regional School District (the "District") filed an *Opposition to the Motion to Dismiss* on December 4, 2021, and on December 7, 2020 Parents filed *Parents' Reply to Hampshire Regional School District's Opposition to Parents' Motion to Enforce Stay-Put*. The Parties argued the *Motion* on January 11, 2020. The arguments and testimony given were recorded by a stenographer, who is in the process of producing a transcript.

For the reasons set forth below, the Parents' *Motion* is hereby DENIED.

RELEVANT PROCEDURAL HISTORY AND FACTUAL BACKGROUND:

On November 23, 2020, Parents filed a *Hearing Request* alleging, in part, that Student's current placement at William E. Norris Elementary School in Southamptton, Massachusetts fails to provide him with a FAPE. Parents' *Hearing Request* seeks placement for Student at White Oak School in Westfield, Massachusetts.

On December 2, 2020, Parents filed the instant *Motion to Enforce Stay-Put* in which they assert that Student's "most recent IEP dated 02/05/20 to 02/04/20 was accepted by the Parents" and called for 40 minutes of specially designed instruction in Reading from a Special Education Teacher 2 times per day. However, in an IEP Amendment dated November 16, 2020, the service was reduced to 1 time per day without prior discussion at the November 12, 2020 Team meeting. Parents further allege that they "were not provided with Prior Written Notice of the reduction and [that] Parents [did] not agree[] to the reduction." Parents, hence, assert that they are "entitled to a restoration of the total amount of Reading services which were in the IEP prior to the IEP Amendment."

On December 4, 2020, the District filed its *Response to Parents’ Hearing Request/Opposition to Parents’ Motion to enforce Stay-Put*.¹ The District asserts that Student “never received 40 minutes twice per day of reading services” as this was “simply a typographical error.” The District argues that “there can be no stay put to an amount of services that [Student] never received. He never received two 40 minutes sessions because that was never the intent of the Team.” The District explains that in September 2020 “reading and writing were separated out so that the full 40 minutes was devoted to reading and he then got an additional 30 minutes per day for just writing.” In addition, the District asserts that Parents accepted the Amendment “which includes the services as described (40 minutes for reading per daily and 30 minutes for writing daily).”

ISSUE:

At issue in this ruling is whether, during the pendency of the current Appeal, Student is entitled to one 40-minute session per day per 5-day cycle of direct reading service pull-out or to two such sessions per day per 5-day cycle. After carefully considering all the evidence produced in support of the Parents' *Motion*, and the thoughtful arguments of counsel for both parties, I find that Student’s stay-put reading service is 1x40min/per day/5-day cycle.

FACTUAL FINDINGS:

These findings are made for the purposes of this *Ruling* only:

1. Student is a third-grader attending the William E. Norris Elementary School in Southamton, Massachusetts. (Parents’ Exhibit 2, Testimony Parent)
2. In February 2020, Student was found eligible for special education and related services under the specific learning disability (SLD) category. Following the Team meeting which Parent² attended, the District proposed an IEP dated 2/5/20-2/4/21 (hereinafter, “2020-2021 IEP”) for Student. Said IEP provided Student with the following services:

Focus on Goal #	Type of Service	Type of Personnel	Frequency/Duration/Cycle	Start Date-End Date
GRID A				
All	Team Consult	General education teacher, special education teacher, OT, SLP	Monthly	2/5/20-2/4/21

¹ This *Ruling* addresses Parent’s *Motion to Enforce Stay-Put* and the District’s opposition thereto; it does not address Parents’ *Hearing Request* and the District’s response thereto.

² In this *Ruling*, references to Parent refer to Student’s mother.

GRID B	None.			
GRID C				
1, 2	Specially Designed Instruction – Reading and Writing	Special education teacher	Daily, 40 min	2/5/20-2/4/21
3	SLP	SLP	3 times, 30 min	2/5/20-2/4/21
4	OT	OT	Weekly, 30 min	2/5/20-2/4/21
1, 2	Summer Tutoring – Reading and Writing	Special education teacher	Yearly, 12 hours	7/6/20-7/24/20

Parents fully accepted the IEP and full inclusion placement at Norris Elementary School on February 26, 2020. (School’s Exhibit 1, Testimony Parent, Testimony White)

3. On September 16, 2020, Parent attended a Team meeting during which she discussed her concerns and “brought up” placement at White Oak School. (Testimony Parent)
4. As a result of the meeting on September 16, 2020, the District proposed an Amendment to the 2020-2021 IEP (hereinafter, the “September Amendment”). This Amendment added to the A Grid for the period 9/16/2020-2/4/2021 a weekly consult between the special education teacher and the paraprofessional for 10 minutes per week. To the B Grid, the Amendment added academic daily academic support for 2 hours with a special education staff. Furthermore, the C Grid reflected the following services:

Focus on Goal #	Type of Service	Type of Personnel	Frequency/Duration/Cycle	Start Date-End Date
GRID C				
1, 2	Specially Designed Instruction – Reading³	Special education teacher	Daily, 40 min	2/5/20-2/4/21

³ The Service Delivery Grid on the originally proposed and accepted February 2020 IEP indicated “Specially Designed Instruction – Reading and Writing” as opposed to “Specially Designed Instruction – Reading” on the September Amendment. When questioned regarding the difference, Team Chair Sarah White could not explain the reason for the changed “Type of Service.” (Testimony White)

1	Specially Designed Instruction – Reading	Special education teacher	Daily, 40 min	9/16/20-2/4/21
2	Specially Designed Instruction – Writing	Special education teacher	Daily, 30 min	9/16/20-2/4/21
3	SLP	SLP	3 times, 30 min	2/5/20-2/4/21
4	OT	OT	Weekly, 30 min	2/5/20-2/4/21
1, 2	Summer Tutoring – Reading and Writing	Special education teacher	Yearly, 12 hours	7/6/20-7/24/20

(bold emphasis added to those changes made to the 2020-2021 IEP by the September Amendment). Furthermore, the September Amendment Page explained the reasons for the changes to be:

1. Additional time in the language-based classroom is recommended in order to provide additional small group instruction for writing.
 2. Paraprofessional support in the general education classroom is being added in order to implement accommodations and modifications as overseen by Student’s language based special education teacher.
 3. Consult time is recommended between Student’s special education teacher and paraprofessional in order to oversee modifications made to assignments given in Student’s general education setting. (School’s Exhibit 1)
5. On September 21, 2020, Parent fully accepted the services proposed by the September Amendment but indicated in writing on the Response Page that she had “asked for White Oak School”. (School’s Exhibit 2, Testimony Parent)
 6. Sarah White, who had chaired all of Student’s IEP Team meetings since February 2020, testified that during the September 16, 2020 IEP Team meeting, the Team had discussed separating, or “splitting”, the reading and writing instruction and adding 30 minutes of direct writing instruction. She testified that there was no discussion at the September Team meeting of having Student participate in 80 minutes of reading instruction daily. (Testimony White). This testimony was echoed by Special Education Teacher Maria Pereira, the special education teacher who had provided Student with his direct reading and writing services since the inception of his IEP in February 2020 and who was also present at said meeting. (Testimony Pereira)

7. Ms. White further testified that she did not document an increase in 40 minutes of reading on the Amendment Page or on the Prior Written Notice (N1) for the September Amendment because the Team had not made any such decision at the preceding Team meeting. She also stated that the Specially Designed Instruction – Reading and Writing on the C grid should have indicated an end date of 9/15/2020 rather than 2/4/2021 and that she had left the wrong end date in error. (Testimony White)
8. Parent testified that she believed that following her acceptance of the September Amendment, Student was receiving 80 minutes of reading support and 30 minutes of writing support daily. Parent further testified that she was not concerned about missed instruction during pull-outs although she also testified that Student was upset about missing specials. She stated that she was under the impression that Student was receiving the services in accordance with his IEP, as amended by the September Amendment. (Testimony Parent)
9. Parent testified that she had not observed Student engaging in 80 minutes of reading support during remote learning but had assumed that Student was receiving reduced services due to the remote setting. (Testimony Parent)
10. On November 12, 2020, Parent again attended a Team meeting where she raised concerns regarding the numerous transitions in Student’s schedule, which were causing Student frustration. (Testimony Parent)
11. Following the November 12, 2020 Team meeting, the District proposed a further Amendment to the 2020-2021 IEP, as amended on September 16, 2020 (hereinafter, the “November Amendment”). The November Amendment indicated that the following changes were being made to the IEP:

Amendment Date	What changes will be made to the existing IEP?	Why?
11/16/20	<ol style="list-style-type: none"> 1. Add small group math instruction for 30 minutes per day, a math goal, and an additional hour of paraprofessional support during the general education math block to Student’s current IEP. 2. Add accommodations to Student’s current IEP. 	These changes are based on the recent team meeting held for the purpose of reviewing the independent evaluations done by Learning Solutions.

The newly amended service delivery grid reflected the following services:

Focus on Goal #	Type of Service	Type of Personnel	Frequency/Duration/Cycle	Start Date-End Date
GRID A				
All	Team Consult	General education teacher, special education teacher, OT, SLP	Monthly	2/5/20-2/4/21
1, 2	Consult	Special education teacher/Paraprofessional	Weekly	9/16/20-2/4/21
GRID B				
1, 2	Academic Support	Special Education Staff	Daily, 2 hours	9/16/20-2/4/21
5	Academic Support-Math	Special Education Staff	Daily, 1 hour	11/12/20-2/4/21
GRID C				
1	Specially Designed Instruction – Reading	Special education teacher	Daily, 40 min	9/16/20-2/4/21
2	Specially Designed Instruction – Writing	Special education teacher	Daily, 30 min	9/16/20-2/4/21
3	SLP	SLP	3 times, 30 min	2/5/20-2/4/21
4	OT	OT	Weekly, 30 min	2/5/20-2/4/21
5	Math	Special education teacher	Daily, 30 min	11/12/20-2/4/21

1, 2	Summer Tutoring – Reading and Writing	Special education teacher	Yearly, 12 hours	7/6/20-7/24/20
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(School’s Exhibit 1, Testimony Parent) (bold emphasis added to those changes made from the September service delivery grid to the November service delivery grid.)

12. On November 24, 2020, Parent fully accepted the services proposed by the November 2020 Amendment. (School’s Exhibit 3)
13. Parent testified that she did not note her rejection of the reduced reading services because she had “only looked over what was discussed” at the Team meeting and they had not discussed a reduction in reading services. Hence, she had overlooked the proposed change in services. Parent shared that she had called the District when she noticed the change sometime later. She testified that she had not intended to accept a reduction in services. (Testimony Parent)
14. Ms. White testified that when she drafted the November Amendment, she noticed the error on the C Grid with regards to reading and changed it. When questioned whether she had noted the change in the Prior Written Notice to Parents, she responded that she had not. (Testimony White)
15. Ms. Pareira testified that she had not, at any time, provided Student with 80 minutes of reading pull-out service. She further confirmed that there had been a reduction in services to Student during the COVID-19 pandemic when the District transitioned to all-remote learning in the spring of 2020. She explained that, at that time, she had provided Parents with a schedule of Student’s services to reflect how services were being provided during the school shut-down. Subsequently, following the September 2020 Team meeting, she provided Student with 70 minutes of total pull-out services daily. She indicated that “around October” she had sent Student’s schedule to Parents and that the schedule reflected a combined 70 minutes of reading and writing services. (Testimony Pereira)

DISCUSSION:

A. Legal Framework:

1. Stay-Put

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. . . .”⁴ 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.⁵ 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.”⁶ Generally, the last accepted IEP is the stay-put IEP.⁷

To determine a child’s “stay-put”, courts often look for the “operative placement,” or the IEP that is “actually functioning at the time the dispute first arises.”⁸ Some circuits have also examined the impact of the proposed change on the student.⁹ Recent BSEA decisions and rulings have similarly applied these principles to identify the “operative placement” as well as to examine the impact on the student of the proposed change.¹⁰

2. *Burden of Persuasion*

Since Parents are the moving party in this *Motion*, they bear the burden of persuasion.¹¹

B. Analysis:

In the instant case, I am asked to identify whether Student’s “stay-put” reading services include two sessions of 40-minute reading instruction per day per 5-day cycle with a special education teacher, as argued by Parents, or whether Student’s “stay-put” reading services include only one session for 40 minutes per day per 5-day cycle, as asserted by the District.¹²

Inarguably, Parents fully accepted the 2020-2021 IEP, and, subsequently, both the

⁴ 20 U.S.C. §1415(j); 34 CFR §300.514; *In Re: Framingham Public Schools and Quin*, BSEA #1605247, 22 MSER 12 (Reichbach, 2016); *In Re: Abington Public Schools*, BSEA # 1407763, 20 MSER 198 (Figueroa, 2014); *Honig v. Doe*, 484 U.S. 305, 325 (1988); *Verhoven v. Brunswick School Committee*, 207 F.3d 1, 10 (1st Cir. 1999); *M.R. and J.R. v. Ridley School District*, 744 F.3d 112, 117 (3d Cir. 2014); M.G.L. c. 71B; 603 CMR 28.08(7).

⁵ *See Doe v. Brookline School Committee*, 722 F.2d 910, 918 (1st Cir. 1983) (“We therefore join the Seventh Circuit in its view that (e)(3) establishes a strong preference, but not a statutory duty, for maintenance of the status quo We do not believe Congress intended 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 the Act: provision of a free *appropriate* education to disabled children”) (internal citations omitted); *see also In Re: Nathan F.*, BSEA # 96-1706, 2 MSER 79 (Byrne, 1996) (finding that it there was no “meeting of the minds” on modified speech-language services for Student as a result of the Team meeting, and therefore the district had no obligation to provide services other than those set out in the last accepted IEP).

⁶ *Student & Concord & Natick Public Schools*, BSEA # 18-00182, 23 MSER 210 (2017) (*Corrected Ruling on Mother’s Request for “Stay Put” Order*).

⁷ *See* 20 U.S.C. §1415(j); 34 CFR §300.514.

⁸ *Drinker v. Colonial School District*, 73 F.3d 859, 867 (3rd Cir. 1996); *Thomas v. Cincinnati Bd. of Education*, 918 F. 2d 618. 626 (6th Cir., 1990).

⁹ *See AW. v. Fairfax County School Board*, 41 IDELR 119 (4th Cir. 2004).

¹⁰ *See In Re Agawam Public Schools and Melmark-New England*, BSEA #1504488, 21 MSER 81 (Berman, 2015).

¹¹ *See Weast v. Schaffer*, 377 F. 3d 449, 455 (4th Cir. 2004).

¹² This *Ruling* does not address the appropriateness of 80 minutes of pull-out reading instruction as that is not the issue before the Hearing Officer in the instant *Motion*.

September and the November Amendments. (School's Exhibits, 1, 2, and 3) Nevertheless, in reference to the September Amendment, I credit both Ms. White and Ms. Pereira's testimony that an increase in reading services was not discussed at the Team meeting on September 16, 2020, nor was it intended to be added to the service delivery grid. (Testimony White, Testimony Pereira) Ms. White compellingly testified that the September Amendment Page did not document an increase in 40 minutes of reading/per day/5-day cycle because that was not the intent of the Team and that the Specially Designed Instruction – Reading and Writing on the C grid should have indicated an end date of 9/15/2020 rather than 2/4/21, which was her "error." (Testimony White) This error resulted in the duplication of reading services on the C Grid. She testified that the increase was not reflected on the prior written notice (N1) because the Team had not concluded that Student required 2x40min/per day/5-day cycle to make effective progress. (Testimony White) Nevertheless, the fact remains that Parents accepted the September Amendment on September 21, 2020 with the increased reading services.¹³ (School's Exhibit 2) It is also a fact that such an increase was never implemented. (Testimony Pereira)

On November 12, 2020, Parents were presented with the November Amendment, which reflected the reading services as 1x40min/per day/5-day cycle. (Testimony White) Parent accepted the November Amendment on November 24, 2020 but convincingly testified that she did so in "error." (School Exhibit 3, Testimony Parent) Parent attested that she signed the November 2020 Amendment, having reviewed the Amendment Page only, which documented the areas of change that were discussed at the November 12, 2020 Team meeting. (Testimony of Parent) In fact, I found Parent credible when she testified that she would not have agreed to a reduction in reading services. (Testimony Parent) Nevertheless, she accepted the reduced services.

The District is correct that, generally, the last accepted IEP (in this case, the 2020-2021 IEP, as amended on November 12, 2020) is the stay-put IEP.¹⁴ The District's argument that Parent's full acceptance of the November 2020 IEP rendered the 1x40minutes/per day/5-day cycle reading services stay-put would be persuasive but for the District's failure to reflect said correction in the Prior Written Notice (N1) that accompanied the November 2020 Amendment. (Testimony White) The IDEA obligates school districts to provide parents prior written notice whenever it proposes to change or terminate the placement or services of an eligible child.¹⁵ The BSEA, too, has held that reduction of a service in a student's IEP constitutes such a change requiring prior

¹³ Whether Parent truly believed that the District had intended to increase reading services to 2x40min/per day/5-day cycle and add 30 minutes of direct writing instruction is unclear, especially in light of the fact that the September Amendment Page highlights the addition of writing services to Student's service delivery grid but fails to reference any increase in reading services. (School Exhibit 1) Parent may have simply overlooked the omission on the Amendment Page and focused instead on the services delivery grid; she testified that she believed that the increased reading services reflected on the grid were offered because she had raised concerns about Student's performance and even raised the idea of outside placement at White Oak School. (Testimony Parent)

¹⁴ See 20 U.S.C. §1415(j); 34 CFR §300.514.

¹⁵ See 20 USC Sec. 1415 (b)(3) and (c); 34 CFR 300.503. Massachusetts has adopted the notice provisions of the IDEA and implementing federal regulations.

written notice.¹⁶ In essence, the “purpose of 34 CFR § 300.503 is to ensure that a parent is aware when a district is proposing or denying to change a portion of a student’s educational program or . . . that the district has denied a specific” request.¹⁷ After all, the main purpose of the procedural safeguards, as interpreted by the Supreme Court, is to afford parents a meaningful role in the decision-making process regarding their disabled children's education.¹⁸ As the Supreme Court stated in *Honig v. Doe*:

[A]ware that schools had all too often denied [disabled] children appropriate educations without in any way consulting their parents, Congress repeatedly emphasized throughout the Act the importance . . . of parental participation . . . and establishe[d] various procedural safeguards that guarantee parents . . . meaningful input into all decisions affecting their child's education and the right to seek review of any decisions they think inappropriate.¹⁹

In 2017, the 9th Circuit Court of Appeals further clarified that “[a]llowing the District to change the IEP unilaterally undermines its function of giving notice of the services the school district has agreed to provide and measuring the student’s progress toward the goals outlined in the IEP. Moreover, any such unilateral amendment is a per se procedural violation of the IDEA because it vitiates the parents' right to participate at every step of the IEP drafting process.”²⁰ The 9th Circuit Court of Appeals added that a school district cannot “merely correct[] [its] unintentional error . . . unilaterally.”²¹ Instead, the Court recommended, “If the District discovered that the IEP did not reflect its understanding of the parties' agreement, it was required to notify [Parent] and seek her consent for any amendment. Absent such consent, the District was bound by the IEP as written unless it sought to re-open the IEP process and proposed a different IEP.”²²

In the instant matter, although the District had “merely corrected” Ms. White’s “error” in the November Amendment, it could not – and should not- have done so “unilaterally.” Parents had

¹⁶ See *In Re: Medford Public Schools*, #02-1855, 38 IDELR 24 (2002) (where the size of the instructional grouping is a fundamental part of the program, a change in the size of the grouping is a revision of the IEP, thus obligating the district to notify Parents formally of its intent to provide small group instruction for the following year, and failure to give such advance notice prior to a change in the services violated the notice provisions of the IDEA and c. 7 IB, and the pertinent regulations).

¹⁷ *Student v. Triton Regional School District*, BSEA #1302663, 19 MSER 80 (Putney-Yaceshyn, 2013) (finding that there is no question that parent understood that the school district had refused her request to provide Student with a laptop and an FM system).

¹⁸ See *Smith v. Squillacote*, 800 F. Supp. 993, 989 (D.D.C. 1992) (The purpose of the notice requirement is to ensure that parents may reach an informed conclusion about whether the services and placement proposed will provide an appropriate education).

¹⁹ *Honig*, 484 U.S. at 311-12 (citations omitted). See also *School Comm. of Burlington v. Department of Educ.*, 471 U.S. 359, 368 (1985) (“Congress incorporated an elaborate set of what it labeled 'procedural safeguards' to insure the full participation of the parents. . . .”); *Board of Educ. v. Rowley*, 458 U.S. 176 at 208 (1982) (“Congress sought to protect individual children by providing for parental involvement. . . .”).

²⁰ *M.C. ex rel. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1196–97 (9th Cir. 2017) (citations omitted).

²¹ *Id.*

²² *Id.* (internal citations to 20 U.S.C. § 1414(d)(3)(D), (F) omitted).

a right to be fully informed before consenting to any change in reading services.²³ To ensure that Parents had all the information they needed to accept (or reject) the corrected services, the District was obligated to provide Prior Written Notice, which, in the instant matter, it failed to do. (Testimony White) In essence, the District's dereliction in its duty to provide Prior Written Notice as to the correction in reading services rendered the November Amendment legally flawed. Furthermore, I credit Parent's testimony that she would not have agreed to a reduction in services. (Testimony of Parent) Since the alteration of the September Amendment was never discussed at the Team meeting on November 12, 2020, there was no "meeting of the minds" as to the correction in reading services.²⁴ For these reasons, I cannot find that the reading services delineated in the November Amendment are Student's stay-put reading services.

Therefore, to determine, Student's stay-put reading services I next turn to the September Amendment.

To find that the September Amendment constitutes Student's stay-put in terms of reading services would fly in the face of the objectives of the stay-put provision of IDEA. First, the purpose of the stay-put provision is to maintain Student in the last agreed-upon placement.²⁵ In this case, both Ms. Pereira and Ms. White credibly testified that the Team did not discuss increasing reading services during the September 16, 2020 meeting; only "splitting" reading from writing services was discussed and agreed-upon. (Testimony Pereira, Testimony White) The Student's IEP Team neither considered nor agreed to the appropriateness of 2x40min/per day/5-day cycle reading services for Student; as one court has stated, "We do not believe Congress intended to freeze an arguably inappropriate placement and program for the three to five years of review proceedings. To construe [the stay-put provision] in this manner would thwart the express central goal of the Act: provision of a free *appropriate* education to disabled children."²⁶ As of September 21, 2020 (the date of Parent's acceptance of the September Amendment), the Team's last "joint, informed decision"²⁷ was that Student required 1x40min/per day/5-day cycle reading services to receive a FAPE, which Parent accepted on February 26, 2020 following the initial February Team meeting. (School's Exhibit 1) As with my finding, *supra*, regarding the legal significance or lack thereof of the November Amendment, I find here that there was no subsequent "meeting of the minds" regarding reading services, rendering the 2020-2021 IEP the stay-put for the purpose of Student's reading services.²⁸

²³ See *Letter to Johnson*, 56 IDELR 51 (OSEP 2010) ("The public agency is not asking the parent to signify that he or she understands the precise nature of all of the services or activities that would be included in an individualized education program (IEP) if the public agency were to develop an IEP for their child [A] parent must have a general understanding of the activity for which he is providing consent rather than have an in-depth understanding of all of the services a child's IEP might provide").

²⁴ See *In Re: Nathan F.*, *supra*.

²⁵ See 34 CFR 300.518(a); see also *Doe v.*, 722 F.2d at 918.

²⁶ *Doe*, 722 F.2d at 918 (citing § 1412(1) of the IDEA with emphasis added).

²⁷ *Pollack v. Reg'l Sch. Unit 75*, No. 2:13-CV-109-NT, 2015 WL 1947315, at *14 (D. Me. Apr. 29, 2015) ("The IEP meeting serves as a communication vehicle between parents and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding [the child's special education]. Parents are considered equal partners with school personnel in making these decisions, and the IEP Team must consider the parents' concerns and the information that they provide regarding their child in ... developing, reviewing, and revising IEPs; and determining placement").

²⁸ See *In Re: Nathan F.*, *supra*.

Furthermore, I cannot find the September Amendment to be Student's stay-put because to do so would result in a significant disruption to Student's schedule in contravention of the purpose of the stay-put provision "to preserve the status quo so as not to disturb a student's placement unnecessarily where there is no meeting of the minds between the parties."²⁹ Beginning on February 26, 2020 and to date, the District had only provided 1x40min/per day/5-day cycle of reading services. (Testimony Pereira) An additional 40-minutes of pull-out services per day would result in Student's increased removal from the general education environment, a consequential departure from and disruption to his current program.

Finally, I find the District's argument that "no student" receives 80 minutes of reading instruction to be unpersuasive and irrelevant. (Testimony White, Testimony Pereira) School districts are charged with the responsibility to offer to each child with a disability an individualized education program (IEP) suitable to the child's special needs.³⁰ Other students' programs are neither at issue nor are they apropos.

In conclusion, for the reasons articulated above, and for the purposes of this *Motion* only, I find that Parents have not met their burden of persuasion. Therefore, Student's stay-put pull-out reading services shall be 1x40min/per day/5-cycle for the pendency of the above-referenced matter.³¹

ORDER

Parents' request to enforce stay-put pull-out reading services at 2x40min/per day/5-day cycle for the duration of this Appeal is hereby DENIED.

By the Hearing Officer,

/s/Alina Kantor Nir

Dated: January 19, 2020

²⁹ *In re: Boston Public Schools*, BSEA # 1503083 and 1401653, 21 MSER 198 (Figueroa, 2015)

³⁰ See 20 U.S.C. §§ 1400(d)(1), 1412(a)(4), 1414(d).

³¹ Nevertheless, Parents accepted the September Amendment. Generally, pursuant to federal and state regulations, "as soon as possible following the development of the IEP, special education and related services must be made available to the child in accordance with the child's IEP." This dictate applies to an "amended proposal" as well. In this case, the District failed to implement an accepted service, raising the potential for a claim for compensatory education for the service for which Parent had a "reasonable expectation[.]" 34 CFR 300.323(c)(2); 603 CMR 28.05(7)(a)(1); see also *Antelope Valley Union High Sch. Dist.*, 858 F. 3d at 1195.