

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

In Re: Boston Public Schools v.
Student

BSEA # 1503083
& BSEA # 1401653

**Ruling on Parent's Emergency Motion for Stay Put Clarification Pending Outcome of
Judicial Proceeding**

A Decision in the above-referenced matter was issued on January 2, 2015, finding Boston Public Schools' (Boston) proposed program at the Horace Mann School appropriate for Student. At the time of issuance of the Decision, Student was attending the READS Collaborative (READS) under a Stay-put Order previously issued in these matters on October 29, 2014.

On January 5, 2015, Parent filed an Appeal of the BSEA Decision in U.S. District Court, and she also filed, with the BSEA, an Emergency Motion for Stay Put Clarification Pending Outcome of Judicial Proceeding with the BSEA. Parent argued that pursuant to 20 U.S.C. §1415(j) Student had a right to remain at READS during the pendency of the ensuing federal court dispute.

Consistent with Rule VII C of the *Hearing Rules for Special Education Appeals*, within seven days of Parent's filing¹, Boston filed an Opposition to Parent's Motion for Clarification of Stay-put arguing that consistent with 34 CFR 300.518(a) Stay-put is triggered

...during the pendency of any administrative or judicial proceedings regarding a due process complaint notice requesting a due process hearing.

Boston further argued that the placement to which it attached was the "then current" agreed upon placement. Boston also relies on 34 C.F.R. §300.518(d) which states in pertinent part that

[I]f the hearing officer in a due process hearing ...agreed with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents [for purposes of

¹ "...Any Party may file written objections to the allowance of the motion and may request a hearing on the motion within seven (7) calendar days after a written motion is filed with the Hearing Officer and the opposing party, unless the Hearing Officer determines that a shorter or longer time is warranted." Rule VII C of the *Hearing Rules for Special Education Appeals*.

Stay-put]. See *Sudbury Pub. Sch. v. Massachusetts Department of Elementary and Secondary Education*, 762 F.Supp. 2d 254, 268 (D. Mass. 2010).

Boston's argument however, is not persuasive in the case at bar because the Decision herein did not agree with Parents, there is no agreement between the Parties that Student should attend Horace Mann and more importantly, Stay-put seeks to maintain the student's placement during the pendency of an appeal at the BSEA or in a judicial proceeding.

Further guidance can be found at 28 CMR 28.08 (7), of the Massachusetts Special Education Regulations. Said Regulation addresses a student's right to IEP services and placement

In accordance with state and federal law, during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then current education program and placement unless the parents and the school district agree otherwise.

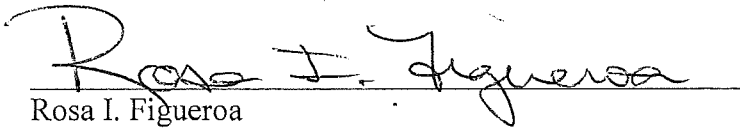
- (a) If the parents are seeking initial placement in the public school, and the child is at least five years old, however, the child shall be placed in the public school program.
- (b) For children three and four years of age, rights to services from the public school district are limited to children who have been found eligible for special education and have an IEP and placement proposed by the public school district and accepted by the parent.
- (c) A hearing officer may 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.
- (d) Except as provided in 603 CMR 28.08(7)(a through c) above, any 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.

It is clear that the purpose of Stay-put is 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. Moving Student back to Horace Mann during the pendency of Parent's judicial appeal would be to disturb Student's placement, something prohibited absent a court order under federal and state statutes and the pertinent regulations. As such, assuming that, as represented by Parent, she has filed an appeal of the BSEA Decision in U.S. District Court,

pursuant to 603 CMR 28.08(7)(c) Boston may not change Student's placement to Horace Mann unless it seeks a preliminary injunction from a Court with pertinent jurisdiction.

Student's Stay-put placement, as determined by this Hearing Officer in the October 29, 2014 Order, during the pendency of Parent's judicial appeal is READS unless Boston seeks and is granted a preliminary injunction changing Student's placement to Horace Mann.

So Ordered by the Hearing Officer,

A handwritten signature in cursive script, reading "Rosa I. Figueroa", written over a horizontal line.

Rosa I. Figueroa

Dated: January 13, 2015