

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

In Re: James S. v.
Abington Public Schools

BSEA # 1407763

Ruling on Father's Motion for Clarification of Stay-put

On August 25, 2014, Father in the above-referenced matter, filed a Motion for Clarification of Stay-put. Father wrote again on August 26, 2014 requesting that the determination of Stay-put be made on an expedited manner.

Abington Public Schools (Abington) responded on August 28, 2014, noting that it did not take a formal position regarding Father's Motion or Mother's request that Student be placed at the League School.

On August 29, 2014, Mother filed a Response opposing Father's Motion and arguing that the League School should be Student's Stay-put placement.

Facts:

The following facts are assumed to be true for purposes of this Ruling only:

1. Student is a fifteen year old resident of Abington, Massachusetts, who has been diagnosed with Autism Spectrum Disorder (ASD).
2. Parents are divorced and they share custody and educational decision-making for Student.
3. Student's Team met on January 10, 2014 to discuss Student's placement for the 2014-2015 school year. Both Parents attended this meeting. The Team agreed to explore the League School and reconvene later in January at a date when Father was available.
4. The Team reconvened on January 21, 2014 to discuss the appropriateness of the League School for Student, concluding that it was an appropriate placement for the 2014-2015 school. The Team referred the file to Abington's Out of District Coordinator to proceed with Student's transition to the League School. Father was not in attendance at this meeting.
5. Apparently unaware that the Team had made a determination in favor of the League School, the Out of District Coordinator proposed the South Shore Educational Collaborative and, with Father's acceptance of the South Shore Educational Collaborative placement on April 10, 2014, Abington proceeded with said placement.
6. On April 4, 2014 Abington issued an IEP calling for placement of Student at the South Shore Collaborative.

7. On April 16, 2014, Mother learned from one of Student's teachers that in dealing exclusively with Father, Abington was proceeding with Student's transition to the South Shore Educational Collaborative.
8. On April 17, Father took Student on a visit to the South Shore Educational Collaborative, over Mother's objection. The same day, Mother rejected placement at the South Shore Educational Collaborative and filed a request for hearing with the BSEA. At the time Student was still in Abington.
9. On May 1, 2014, Student transferred to the South Shore Educational Collaborative where he remained through June 17, 2014, the end of the school year.
10. Mother rejected said placement alleging that at the Team meetings in January 2014, Abington had discussed and offered to place Student at the League School. Mother's Hearing is pending before the BSEA and scheduled to proceed in October 2014.
11. Following a Pre-hearing Conference on July 1, 2014, Abington took the position that it would support Student's placement at the League School. Abington issued an Amendment to Student's IEP on July 17, 2014 noting that "the district was recommending placement at the League School in Walpole". The Amendment and placement page was forwarded to Parents and on or about July 26, 2014, Mother accepted placement of Student at the League School.
12. In August 2014, Student completed the admissions process at the League School and on August 19, 2014, the League School formally accepted him noting that Student was "an excellent candidate to benefit from" its Pathways program.
13. Abington agrees to place Student at the South Shore Collaborative during the pendency of the present dispute or at the League School if ordered to do so by the BSEA.

LEGAL CONCLUSIONS:

The jurisdiction of the BSEA to address maintenance of a student's placement during the pendency of a proceeding under the IDEA can be found at 20 USC 1415(j), 34 CFR 300.518 and 603 CMR 28.08(7). However, the instant matter presents a peculiar set of facts. While Abington concedes the appropriateness of both the South Shore Collaborative and the League School for Student, it is Parents who differ in their opinion as to what is appropriate, as each supports a different placement. Until the matter is heard on the merits, the Parties seek clarification as to Student's stay put rights.

Federal and Massachusetts special education laws mandate that students remain in their "then current" educational placement during the pendency of any dispute unless 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). This right is commonly known as Stay-put. In determining a student's stay-put program and placement one must first look at the student's last accepted IEP, the document that determines the school district's responsibility toward a resident student. One must also examine the particular facts in this case to ascertain Student's Stay-put rights during the pendency of a dispute. See *Hale v. Poplar Bluff R-I School District*, 280 F 3rd

831(8th Cir. 2002) (which calls upon 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).

Here, Abington has taken the position that it will support Student's placement at the South Shore Collaborative, or if ordered, at the League School, and thus the dispute is not really between Parents and Abington but rather between Parents themselves. However, while Father initiated the Motion for Clarification of Stay-put, Father is not the Petitioner in the context of BSEA case and 20 USC §1415(j), 34 CFR 300.518(a), G.L. c.71B §3, 603 CMR 28.08 (7), Mother is.

Mother, the moving party in the case in chief, argues that Student's Stay-put placement should be the League School basing her argument on the fact that the Team had originally agreed to said placement in January 2014, even if it later named a different placement (the South Shore Collaborative) when it issued its IEP and placement page on April 4, 2014.¹ According to Mother, leaving Student at the South Shore Educational Collaborative or in Abington during the pendency of this dispute would be harmful to him, because she challenges the appropriateness of the South Shore Educational Collaborative. Moreover, Mother asserts that placing Student at the League School (where he should have been from the beginning) during the pendency of the appeal would do away with unnecessary and harmful transitions for Student.

Mother asserts that Student was still in Abington when she filed her request for Hearing. She argues that Stay-put seeks preservation of the "operative placement actually functioning at the time the dispute arose", therefore, Student's Stay-put placement is Abington. Mother's reasoning is based on her assertion that the IEP calling for the South Shore Educational Collaborative had not yet been implemented. She argued that

If an IEP has been implemented, then that program's placement will be the one subject to the stay put provision. And where, as here the dispute arises before any IEP has been implemented, the "current educational placement" will be the operative placement under which the child is actually receiving instruction at the time the dispute arises. *Thomas v. Cincinnati Bd of Educ.*, 918 F.2d 618, 626 (6th Cir. 1990).

Mother is correct that determination of Stay-put involves a narrow review. Stay-put simply seeks to maintain the *status quo* by not disturbing the student's educational life unnecessarily during the pendency of any IDEA proceeding. While Mother is correct that Student's then current educational placement is equivalent to "the operative placement actually functioning

¹ The procedural issues as well as the appropriateness of the League School are the issues in the case on the merits pending for Hearing in October. I note therefore that the appropriateness of the South Shore Educational Collaborative or the League School is not considered in this Ruling. No Party is arguing that Student's safety is at risk at either out of district placement.

at the time the dispute first arose”², that determination is less clear under the very unique facts in this case.

While the League School may very well be the placement determined at the conclusion of the Hearing on the merits, to enter a finding that this should be Student’s placement during the pendency of the dispute is premature and contrary to law. Stay-put is predicated on what was, not on what could be or should be. As such, at this juncture, I can find no legal basis in support of Mother’s claim that Student should be at the League School during the pendency of this appeal, even if Abington does not oppose said placement.

This leaves only two other options for consideration: Abington and the South Shore Educational Collaborative. Mother is correct that Student’s then educational placement at the time she initiated the dispute was Abington. This however, is not where Student *has been* under an accepted IEP by Father. The purpose of Stay-put is not to disturb that which is known and familiar to a student while the ultimate placement to which he or she is entitled is ascertained. While a strict application of Stay-put might call for Student to return to Abington, returning Student to Abington (a placement all agree was inappropriate and potentially unsafe for him) would be to disturb the placement where he was for the last two months of the 2013-2014 school year. To ignore the spirit of the law at this juncture would be a miscarriage of justice. Therefore, I find that unless Father and Mother otherwise agree to the League School, Student’s Stay-put placement is the South Shore Educational Collaborative.³

So Ordered by the Hearing Officer,

Rosa I. Figueroa

Dated: September 11, 2014

² *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).

³ It is extremely sad that Father and Mother have been unable to agree on a placement for Student during the pendency of this proceeding, given that the final outcome of the case may likely lead to yet one more transition for this already fragile student.