

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

Bureau of Special Education Appeals

In Re: Tahlia H.

&

BSEA #1606007

Taunton Public Schools

ORDER

This matter comes before the BSEA on the March 28, 2016 Motion of the Taunton Public Schools for a "Stay Put" order. No opposition or other submission has been received from the Parents. Review of the School's Motion establishes the following relevant facts:

- 1.) Tahlia is a 9 year old resident of Taunton.
- 2.) An Individualized Education program (IEP) was developed for Tahlia at a Team meeting on December 3, 2015 to cover the period of December 3, 2015 through December 3, 2016. The IEP calls for Tahlia to receive a full school day of special education and related services in a substantially separate classroom within a Taunton Public Schools elementary building. On January 5, 2016 the Parent responded to the IEP accepting the placement and services, but rejecting the omission of a one-to-one aide for Tahlia.
- 3.) The current IEP is substantially similar to the immediately preceding IEP covering the time period January 6, 2015 to January 5, 2016. The 2015-2016 IEP was accepted by the Parent on April 6, 2015.
- 4.) There have been no Amendments to, or additional objections to the current IEP since the Parent's Response on January 5, 2016.
- 5.) Taunton Public Schools has been able to fully implement the current IEP for Tahlia since it was proposed.

6.) Tahlia has not attended school since the end of February, 2016.

7.) The Parents requested a BSEA Hearing on March 10, 2016. The Hearing is scheduled to take place on April 13 & 14, 2016.

LEGAL FRAMEWORK

"Stay Put" is special education shorthand for one of the fundamental procedural protections available to students with disabilities under the IDEA and MGLc.71B. Unless the Parents and the local education agency/state agree to a different placement, an eligible student is entitled to remain in the last educational program accepted by the Parents while dispute resolution proceedings unfold or until a superseding program is accepted by the Parents.

The federal stay put protections are set out at 20 USC§1415(j):

[D]uring the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the Parents otherwise agree, the child shall remain in the then-current education placement of the child;

and at 34 CFR §300.518:

[U]nless the State and local agency and the Parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.

Massachusetts extends "stay put" protections to eligible students whenever the parents and responsible school districts disagree even apart from formal due process proceedings under the IDEA and MGLc.71B.

603 CMR 28.08(7) provides:

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.

(emphasis added)

Parental rejection of any proposal to initiate, continue, supplement, change or withdraw a special education service or setting is an indication of a parent's "disagreement" sufficient to trigger "stay put".

CONCLUSION

Based on the facts recited above I find that Tahlia's "last accepted" IEP is the one developed at the December 3, 2015 Team meeting. Tahlia's "stay put" placement, therefore, is in a substantially separate classroom within the Taunton Public School's where she is entitled to receive the special education and related services listed on that IEP. Taunton is responsible for implementing all terms of Tahlia's last accepted IEP pending the final resolution of this dispute or further Orders from the BSEA.

By the Hearing Officer



Lindsay Byrne
Dated: April 12, 2016