**COMMONWEALTH OF MASSACHUSETTS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Devereux Advanced Behavioral Health BSEA # 2212001**

**& Northbridge Public Schools**

**RULING ON PARENTS’ MOTION FOR STAY-PUT**

*PROCEDURAL HISTORY*

Parents filed a Request for Hearing on June 13, 2022. The Hearing Officer allowed the Parties’ joint request to postpone the July 13, 2022 Hearing until September 1, 2022. The Parties agreed that the-stay put issue would be decided based solely upon their written submissions, which included Parents’ Request for Accelerated Hearing and Motion to Enforce Stay-Put and supporting memorandum, Devereux’s Response to Parents’ Request for Accelerated Hearing and Motion to Enforce Stay-Put, and the Response by the Northbridge Public Schools.

*PARENTS’ POSITION*

Parents argue that the stay-put provision of federal and state special education are applicable to approved private special education schools. Thus, Student is entitled to remain in the Devereux Advanced Behavioral Health (Devereux) placement during the pendency of this dispute.

*DEVEREUX’S POSITION*

Devereux contends that Parents are not entitled to an Order that Devereux must maintain Student’s placement. It argues that stay-put does not apply to specific private schools which have lawfully terminated a student on the basis of health and safety, consistent with Massachusetts law. It states that a stay-put placement refers to the type of special education program and services, rather than to a specific school. Finally, it argues that a family is not entitled to their “ideal placement.” They are only entitled to a safe and appropriate placement which can deliver the same array of services that Northbridge is obligated to provide in accordance with Student’s IEP.

*NORTHBRIDGE’S POSITION*

Northbridge concurs with Student and Parent- that Student is entitled to stay-put at Devereux until a new placement is agreed to by Northbridge and Parents. The District also agrees with Devereux’s decision to terminate Student pursuant to 603 CMR 20,09(12)(b), as he presents as a clear and present danger to the health and safety of himself and others.. It does not take a position regarding Devereux’s procedural compliance with the aforementioned regulation.

*FACTS[[1]](#footnote-1)*

Student is sixteen years old. The Department of Children and Families (“DCF”) has been involved with him and his family since 2018 due to multiple allegations of abuse and neglect, some of which were supported. Student’s parents have joint legal custody and DCF has physical custody of Student. Student’s diagnoses include Persistent Depressive Disorder (Dysthymia), Generalized Anxiety Disorder and Unspecified trauma and stressor related disorder. In November 2020 Student was placed residentially at Devereux. In May 2021 Student was placed by DCF in Oxford House, a group home in Rochdale, Massachusetts. He continued to attend Devereux as a day student funded by Northbridge.

On or around September 14, 2021, a Dudley District Court judge issued an Abuse Prevention Order requiring Student not to abuse a young disabled student (“Student Doe”) who also attends Devereux, and to stay at least 25 yards from said student at all times.

On September 24, 2021, the judge issued another Abuse Prevention Order with essentially the same conditions. The Order was later extended until October 4, 2021 and extended again until October 4, 2022. Between October 28, 2021 and May 23, 2022, Student engaged in behaviors related to Student Doe which were in violation of the terms of the restraining order and caused Devereux to generate approximately ten “RADAR” incident reports.

On October 28, 2021, Student told a peer, “I need you to beat the [expletive] out of Student Doe; someone needs to beat [Student Doe] up.” On December 1, 2021 Student made verbal threats regarding Student Doe and attempted to forcibly enter Student Doe’s classroom. On February 1, 2022, Student Doe made a middle finger gesture to Student who returned the same gesture to Student Doe and called Student Doe a derogatory name. On February 16, 2022, Student was intentionally within 25 yards of Student Doe and refused to leave the area. On March 2, 2022 Student made a verbal threat regarding Student Doe and forcibly attempted to gain access to the building that Student was in, resulting in the use of physical management. On April 5, 2022, Student refused to leave the area where Student Doe was and intentionally remained within 25 yards of Student Doe. On April 29, 2022, Student Doe made a verbal statement to Student who became verbally aggressive toward Student Doe and hit Student Doe’s classroom door with his crutches. On May 13, 2022 Student wrote a derogatory statement on a desk (impliedly about Student Doe) and Student Doe saw it later that day. On May 23, 2022 Student and a peer yelled threats and profanities at Student Doe. Student left his classroom and forcefully began to kick Student Doe’s classroom door, more than once. Student stated, “If we don’t get you today, we will get you tomorrow.” Staff redirected Student and he left the area briefly. Student then left the school building and punched the window of Student Doe’s classroom, injuring his hand. Student realized that Student Doe’s classroom had been evacuated and he then headed toward Student Doe’s next classroom. Staff redirected Student who went to a nearby playground and continued to shout, “If we don’t get you today, we’ll get you tomorrow.”

On May 27, 2022, Devereux sent a letter to Northbridge’s Director of Pupil Personnel notifying Northbridge of its emergency termination of Student from Devereux. The letter stated that Devereux’s “primary concern is that [Student] presents a clear and present threat to the health and safety of himself and others,” and that Student’s termination would be effective as of June 3, 2022. Devereux requested that a team termination meeting be convened on June 3, 2022.

The termination meeting was held on June 3, 2022 and was attended by representatives from Devereux, Northbridge, DCF, Wayside Network, Parents, their court-appointed attorneys and Student’s court-appointed attorney. Although many of the meeting participants disagreed with the proposed termination from Devereux, Student was terminated from his Devereux placement later that day. Northbridge provided Student with a laptop and has been providing him with tutoring for two hours per day at Oxford House, where he resides. Devereux has provided course descriptions and academic work. Prior to Student’s termination, it was expected that he would finish the school year at Devereux on June 20, 2022, the last day prior to the Extended School Year classes. Student was not enrolled in the summer session. It was previously expected that Student would return to Devereux in the fall of 2022. The District sent referral packets to five potential placements upon receipt of Parents’ consent on or after June 23, 2022. As of the July 5, 2022 conference call, Student had not been accepted at any alternate placement.

*ANALYSIS/CONCLUSION*

The IDEA's stay put provision provides, *inter alia,* that “during 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 educational placement of such child.”[[2]](#footnote-2)  Its essential purpose is to preserve the status quo pending resolution of a dispute between the parties, thereby preventing unilateral action by a school district in contravention of a student’s or parent's objection, until the completion of due process proceedings.[[3]](#footnote-3) This does not preclude every change with respect to a student’s operative placement, but court decisions are clear that when a proposed change in services would likely substantially change a student’s current educational services, then stay-put principles are implicated.[[4]](#footnote-4)

BSEA Decisions have consistently held that the IDEA’s stay- put requirement may apply to a private school.[[5]](#footnote-5)Cases applying the “stay put” provision when there is a proposed change from one private school to another have fallen into two categories: “school specific” cases, where a hearing officer has determined that “stay-put” applied to a particular private school; and “comparability cases” where “stay-put” requirements could be fulfilled by providing student with services that were “comparable” to those he or she had been receiving, but in a different location.

The comparability line of cases does not pertain to the instant case, because there has been no other placement yet identified as appropriate or available to Student. Thus, I look to the “school specific” cases for guidance. The case of *Lolani and Northampton Public Schools* (BSEA #04-0359, 2003) offers useful and persuasive guidance. 603 CMR 28.06(2)(f)(1) provides, “Students in out-of-district placements shall be entitled to the full protections of state and federal special education law and regulation.” As noted by the hearing officer in *Lolani*, “There is no legislative language exempting publicly funded students placed in private special education facilities from application of the ‘stay put’ doctrine.” Further, the provisions of 603 CMR 18.00, the regulations governing private special education schools, relate back to the general special education regulations found at 603 CMR 28.00, which include the “stay-put” provision and does not provide for any exemption for publicly placed private school students. As noted in *Lolani*, if the drafters of the regulations had “intended to strip private school students of a right accorded to public school students they would have said so.”

Recent BSEA cases have followed *Lolani*. In a recent case, the private school sought to terminate Student’s placement due to unsafe behaviors and a successor placement could not be located. The hearing officer ordered that the private school and LEA convene student’s Team to determine what additional supports may be necessary to provide a safe “stay-put” placement for student. She ordered the LEA to fund any additional staff or supports for student in the stay-put placement while it continued the search for an alternate placement[[6]](#footnote-6). In another recent case, the hearing officer allowed a student’s request to stay-put in a private placement after an incident in which a staff member was maimed, because there was no alternate placement identified for the student and the hearing officer found that the program could be modified to be made safe for the student.[[7]](#footnote-7)

As I found in a prior case, “As a matter of public policy and if the IDEA’s stay-put provisions are to have any meaning, the BSEA cannot issue a decision finding that Student does not have any placement in which to remain during the pendency of this matter.” *Framingham v. Guild School*, 118 LRP 21037 (Putney-Yaceshyn, 2018)

Based upon the foregoing, and because Student has not been accepted into any alternative placement, I find that Student is entitled to stay put at Devereux. In order to ensure a safe transition back to Devereux following the summer break, the following Orders are entered:

1. Student is entitled to stay put at Devereux during the pendency of this proceeding.
2. Student’s Team, inclusive of relevant Devereux personnel, will convene to determine what additional supports will be required to provide Student and Student Doe with a safe environment.
3. Northbridge will fund any additional staff or supports necessary to ensure safety.
4. Northbridge will continue its search for an appropriate alternate placement for Student.



Dated: August 9, 2022

1. The facts are established for purposes of this Ruling only. [↑](#footnote-ref-1)
2. 20 USC § 1415(j); 34 CFR §300.518. [↑](#footnote-ref-2)
3. *CP v. Leon County School Bd. Florida*, 483 F.3d 1151, 1156 (11th Cir. 2007) (“provision amounts to, in effect, an automatic preliminary injunction, maintaining the status quo and ensuring that schools cannot exclude a disabled student or change his placement without complying with due process requirements”); *Verhoeven v. Brunswick School Committee*, 207 F.3d 1, 3, 10 (1st Cir. 1999) (preservation of the status quo ensures that the student remains in the last placement that the parents and the educational authority agreed to be appropriate). [↑](#footnote-ref-3)
4. E.g., *Hale v. Poplar Bluff R-1 School District,* 280 F.3d 831(8th Cir. 2002) (determination of whether there has been a change in student’s “then-current educational placement” is a “fact-specific” inquiry that considers the impact of a change of placement on student’s education); *Tennessee Department of Mental Health v. Paul B*., 88 F.3d 1466 (6th Cir. 1996) (“must identify a detrimental change in the elements of an educational program in order for a chance to qualify for the stay-put provision”); *Sherri A.D. v. Kirby,* 975 F.2d 193, 206 (5th Cir. 1992) (change in student’s stay-put placement occurs only when “a fundamental change in, or elimination of, a basic element of the educational program has occurred”); *DeLeon v. Susquehanna Community School District*, 747 F.2d 149, 153-154 (3rd Cir. 1984) (“touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child's learning experience”). [↑](#footnote-ref-4)
5. See *In Re: Northampton Public Schools*, BSEA # 04-0359, 9 MSER 397 (SEA MA 2003) (stay put order issued against a private school). [↑](#footnote-ref-5)
6. *In Re: Belmont Public Schools and Devereaux Advanced Behavioral Health,*BSEA #2103476, 26 MSER 325 (Figueroa, 2020) [↑](#footnote-ref-6)
7. *In Re: Quincy Public Schools and League School of Greater Boston*, BSEA #2202940 (Mitchell, 2021) [↑](#footnote-ref-7)