**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. North Middlesex Regional School District BSEA # 2400589**

**& Dr. Franklin Perkins School**

**RULING ON PARENTS’ MOTION TO ENFORCE STAY-PUT**

**AND**

**PARENTS’ MOTION TO WAIVE ORAL ARGUMENTS ON PARENTS’ MOTION TO ENFORCE STAY-PUT**

This matter comes before the Hearing Officer on the July 20, 2023 *Parents’ Motion to Enforce Stay-Put* (*Motion*) seeking an order that during the pendency of the current Appeal, Dr. Franklin Perkins School (Perkins) is Student’s stay-put placement and that the North Middlesex Regional School District (North Middlesex or the District) must continue to fund Student’s placement at Perkins.

On July 26, 2023, North Middlesex informed the Hearing Officer that the District would not be filing an opposition to Parents’ *Motion*.

On July 26, 2023, Parents filed *Parents’ Motion to Waive Oral Arguments* *on* *Parents’ Motion to Enforce Stay-Put[[1]](#footnote-1)* requesting, “pursuant to Rule VI: D of the Hearing Rules for Special Education, that oral argument on Foster Parents' Motion to Enforce Stay-Put be waived. In support of this Motion, Parents state that delay would seriously injure the Student and oral argument would not advance the Hearing Officer's understanding of the issues involved.” Parents also requested that “[d]ue to the injury to the Student that would likely result by further delays, Parents also respectfully request that any requests for extensions of time to file Oppositions to the Motion to Enforce Stay-Put be denied.[[2]](#footnote-2)

On July 27, 2023, Perkins filed *Doctor Franklin Perkins School’s Opposition to Foster Parents’ Motion to Enforce Stay-Put (Opposition)*, asserting that foster parents are not entitled to an order that Perkins must take Student back and reinstate his enrollment as his stay-put placement and that even if this matter did involve a termination initiated by Perkins, the fact would remain that stay-put does not apply to specific private schools, but rather to the array of services contained in the last-accepted IEP.

In response, on the same day, the undersigned Hearing Officer asked the parties to submit exhibits in support of their motions, or, in the alternative, proceed to a hearing on the Motion. Parents and Perkins agreed to waive oral arguments on the Motion, and on July 28, 2023, Parents submitted Exhibits 1 through 11 (marked P-1 to P-11), and Perkins submitted Exhibits A through K (marked S-A to S-K). As such, *Parents’ Motion to Waive Oral Arguments* *on* *Parents’ Motion to Enforce Stay-Put* was ALLOWED, in part, and this Ruling is being issued without a hearing pursuant to Bureau of Special Education Appeals Hearing Rule VII(D).[[3]](#footnote-3) Moreover, all extensions of time to file oppositions to the *Motion* will be denied.[[4]](#footnote-4)

In addition, for the reasons set forth below, Parent’s *Motion* is hereby **ALLOWED**.

**ISSUES:**

At issue in this ruling is whether, during the pendency of the current Appeal, Perkins is Student’s stay-put placement; and, if so, whether the District must continue to fund Student’s placement at Perkins pending the underlying dispute?

**FACTUAL FINDINGS AND RELEVANT PROCEDURAL HISTORY:**

These findings are made for the purposes of this Ruling only and are subject to change in future rulings:

1. Student is an eleven-year-old resident of Pepperell, Massachusetts. Student is diagnosed with Mild Intellectual Disability, Autism Spectrum Disorder, Unspecified Disruptive Behaviors, Frontal Lobe and Executive Functioning Deficit. (P-11)
2. Student is in the care and custody of the Department of Children and Families (DCF). (Affidavit)
3. During the 2021-2022 and 2022-2023 school years, Student attended Perkins as a day student. (P-11)
4. On June 6, 2022, a “progress meeting” was held at Perkins. Parent noted some concerns but also noted growth. Perkins expressed concern about meeting Student’s needs, especially in the “long term.”(S-H)
5. The Team convened on October 5, 2022 and proposed placement at Perkins in an IEP dated October 5, 2022 to October 4, 2023 (2023-2024 IEP), including extended school year services at Perkins. (P-11) At that time, Perkins expressed concerns about Student’s lower academic, social, and adaptive skills in comparison to his classmates. (P-11, S-I, S-J)
6. The IEP dated October 5, 2022 to October 4, 2023 states,

“[Parent] expressed that [Student] has made gains in school and is generalizing it in the home setting. She noted that his reading has improved. [Parent] stated that she would like to see [Student] gain more social emotional skills, to work on impulse control and being able to access strategies in the moment to aid in emotional regulation. In addition, for [Student] to improve his memory, understanding timelines, and being able to differentiate between fiction and reality. She would like for him to improve his daily living skills (eating, getting dressed, etc.) and his social skills both in the school and community settings. [Perkins] expressed that [Student] is making wonderful academic progress. However, she is concerned about his social emotional and social skills and that [Student] struggles to generalize learned skills in the school setting.” (P-11, S-J)

1. According to Perkins, at the October 5, 2022 IEP meeting “it was agreed upon to have a change of placement from all participants.” (S-A)
2. The N1 issued on October 18, 2022 states, in part,

“1. The district is proposing an IEP and a placement for [Student].

2. The district is proposing the enclosed IEP and placement as it reflects decisions made by [Student’s] team during the annual review meeting on October 5, 2022.

3. No options under consideration have been rejected. However, Dr. Franklin Perkins School has notified parents and the district that they believe [Student’s] needs would be better met in a different placement. The district is currently working with parents to seek a new placement.” (S-K)

1. In October 2022 and November 2022, the District sent a total of 7 referral packets to out-of-District placements. Student was not accepted at any of these 7 programs. In December 2022, the District sent a referral packet to Keystone Education Collaborative in Fitchburg, Massachusetts, in response to which Keystone indicated that it “believ[ed to] have a program but no space [was available] as of 1.26.2023. [Parent] toured the site offered [but] there [were] no seats available.” (P-5)
2. On ember 8, 2022, Parent accepted the 2022-2023 IEP and placement. She also gave “permission for the school to share information about [Student] to the following schools[:] Archway, Community therapeutic day school, Keystone and Northshore.” (S-G)
3. In January 2023, the District made one referral to an out-of-District placement, but Student was not granted acceptance thereto. In February 2023, the District sent a referral to LABBB which found Student a “good fit but no space [was available] until at least the start of 2023-2024.” (P-5)
4. In January 2023, a Keystone Education Collaborative admission staff member observed Student at Perkins. (S-F)
5. On March 10, 2023, Perkins and the Assistant Director of Special Education for the District “had a phone call identifying June 23rd as [Student’s] the last day at Perkins.” (S-A)
6. On March 20, 2023, the Assistant Director of Special Education for the District informed Parent that he had “heard from Keystone about [Student’s] referral. They do believe that they can meet his needs in their Townsend site. However, they have put all referrals on hold until they are able to fill open staff positions. LABBB also believes that they can meet his needs but does not anticipate being able to accept any more students until the start of next school year. Please keep in mind that our district is not a member of LABBB and that LABBB will need to prioritize referrals from their member districts first.” (S-E)
7. On May 30, 2023, the Assistant Director of Special Education for the District informed Perkins that “ of the 13 referrals I have made, I have decided that 2 are not appropriate, and 9 have not accepted him. That leaves us with 2 possibilities. However, it is not clear when either of these will have the capacity to start him. I am meeting with [Parent] tomorrow to discuss next steps. In the meantime, if [Perkins] will not keep him until a new placement is ready, please send me a letter indicating the date of termination.” (S-B)
8. On May 31, 2023, the Assistant Director of Special Education for the District informed Perkins that Parent was “planning to place [Student] in a Keystone Collaborative program. The start date for this is uncertain but will be no later than the start of next school year.” (S-D)
9. Via an undated letter, Perkins sent written notice to the District that Student’s last day at Perkins would be on June 23, 2023. (P-1, S-C)
10. On June 7, 2023, Perkins wrote to the Assistant Director of Special Education for the District, stating that “it is wonderful that Keystone has accepted [Student] and [Parent] feels this is a good fit. With collaboration from the leadership team, we need to maintain the discharge date of June 23rd, 2023, and I thank you for your understanding. Please let me know if their team would like to connect at any point to help support a successful transition for [Student].” (S-B)
11. On June 8, 2023, the Assistant Director of Special Education for the District requested that Perkins “send [him] a termination letter with the discharge date of June 23 so [he could] use it for billing and to document the termination for the student's file.” He also asked Keystone, copied on the same email, “whether Keystone would like [him] to set up a transition meeting with Perkins” and stated that, “[i]f so, we should set it up for no later than June 23.” (S-B)
12. On June 8, 2023, in response to an email from Parent, the Assistant Director of Special Education for the District inquired whether Parent was “seeking placement in the Keystone Fitchburg program.” He informed Parent that the Keystone Fitchburg program did not have an opening. The Assistant Director of Special Education asked Parent if she was “interested in looking at other placement opportunities.” He informed her, “We currently do not have an ESY placement and I wish we did.” (P-2)
13. On June 14, 2023, the District sent a referral packet to Cardinal Cushing. It is unclear whether, to date, a response has been received. (P-5, P-8, P-9)
14. On June 15, 2023, Perkins confirmed via email to the District that June 23, 2023 would be Student’s last day and offered “to collaborate with his new team at any time.” Perkins noted that Keystone has been unresponsive. (S-B)
15. June 23, 2023 was Student’s last day at Perkins. (P-1)
16. On July 10, 2023, Parents provided consent to the District to send a referral packet to Lighthouse School and The Devereux School. (P-10)
17. On July 20, 2023, Parents filed Foster Parents’ Accelerated Hearing Request, asserting, in part, that Student is without an available educational program.
18. On July 21, 2023, the matter was determined to meet the standard for an accelerated hearing, pursuant to Rule II D of the *Hearing Rules of Special Education Appeals*. The matter is scheduled for Hearing on August 21, 2023.Since his termination from Perkins, Student’s behavior and adaptive functioning have regressed substantially. (Affidavit)
19. Student did not attend ESY programming at Perkins or at any other program. (Affidavit, P-3, P-4)

Perkins’ July 28, 2023 *Response to the Hearing Request* indicates that “it has been communicated to counsel for Foster Parents and the district that [Perkins] would be willing to consider having [Student] return to [Perkins] while a successor placement is sought, but the school would need certain additional support.”

**LEGAL STANDARDS:**

1. Stay-Put

The Individual with Disabilities Education Act’s (IDEA) “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, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.”[[5]](#footnote-5) Preservation of the “status quo” assures that the student “stays-put” in the last placement the parents and the school district agreed was appropriate for him.[[6]](#footnote-6) 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.”[[7]](#footnote-7) Generally, the last accepted IEP is the stay-put IEP.[[8]](#footnote-8)

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.”[[9]](#footnote-9) Some circuits have also examined the impact of the proposed change on the student.[[10]](#footnote-10) 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.[[11]](#footnote-11)

2. Stay-Put and Private Placements.

BSEA rulings[[12]](#footnote-12) have consistently found that

“[u]nder both federal and state special education law an eligible student who challenges any aspect of her special education program through a due process proceeding is entitled to remain in the program in which s/he is then currently enrolled until the dispute is resolved by an administrative or judicial officer, or by an agreement. 20 U.S.C. § 1415 (j); 34 CFR § 300.514; 603 CMR 28.08 (7). The regulatory language according this right is unequivocal. There are no qualifiers.”[[13]](#footnote-13)

Specifically, in  *In Re: Lolani*, Hearing Officer Byrne explained that

“the Massachusetts regulations must be read to effect the purpose of both the IDEA and M.G.L. c. 71B to provide a free, appropriate public education to all students with disabilities. As stated in the first section of the regulations governing private special education schools, the provisions of 603 CMR 18.00 relate back to the general special education regulations found at 603 CMR 28.00. These two sets of regulations must be read to complement, not to exclude, each other. Reading the regulatory language of 603 CMR 18.05 (7) in this context I find that the termination provisions applicable to publicly funded private school students set out explicit procedures that acknowledge the special characteristics of private school placements, but do not exempt those placements from adherence to the fundamental set of special education rights that attach to and travel with the student. One of those fundamental rights is the right to “stay put”. Had the drafters intended to strip private school students of a right accorded to public school students they would have said so.”[[14]](#footnote-14)

This does not mean that “parental assertion of stay put rights to a particular private school bar[s] any publicly funded student from termination, [because, otherwise,] the regulation covering that specific topic – termination of publicly funded students from a private school – would serve no purpose.”[[15]](#footnote-15) There are situations when the term "current educational placement" referenced in 34 CFR 300.518 includes the setting in which the IEP is implemented but not considered to be location specific.[[16]](#footnote-16) However, where the school district has yet to identify any alternative placements for the student, the Hearing Officer must “look to the specifics [of a] case, with an eye for ensuring [the student’s] continued education and for providing her with a FAPE as soon as possible.”[[17]](#footnote-17)

3. Planned Terminations from Private School Placements

603 CMR 18.05(7) addresses termination of students in private school placements:

“(a) … The school shall keep such person informed of the progress of the student and shall notify that person immediately if **termination or discharge** of the student is being discussed.

(b) The school shall, at the time of admission, make a commitment to the public school district or appropriate human service agency that it will try every available means to maintain the student's placement until the local Administrator of Special Education or officials of the appropriate human service agency have had sufficient time to search for an alternative placement.

(c) Planned Terminations:

* 1. Except in emergency cases, the school shall notify the school district of the need for an IEP review meeting. The school district shall arrange such meeting and provide to all parties including the parent and if appropriate, the student, notice of this meeting (10) days in advance of the intended date of the meeting. The meeting shall be held for the purpose of planning and developing a written termination plan for the student.
	2. The plan shall describe the student's specific program needs, the short and long term educational goals of the program, and recommendations for follow-up and/or transitional services.
	3. The school shall thoroughly explain termination procedures to the student, the parents, the Administrator of Special Education and officials of the appropriate human service agency.
	4. The written termination plan shall be implemented in no less than (30) days unless all parties agree to an earlier termination date.”

**APPLICATION OF LEGAL STANDARDS:**

Here, the parties disagree not only on Student’s stay-put placement, but also on whether Student’s placement was terminated via a “collaborative Team process” or pursuant to a “planned termination” in accordance with 603 CMR 18.05(7)(c). Specifically, Parents assert that Perkins did not follow the process for a planned termination and that Perkins is Student’s stay-put placement. On the other hand, Perkins argues that the decision to end Student’s enrollment was made as part of a collaborative Team process as the Team agreed that Student was not receiving a FAPE at Perkins, and that Student’s stay-put placement is

 not Perkins but rather the sum of his supports and services as delineated in his IEP. Perkins also asserts that the BSEA has no authority to force Perkins to maintain Student in a “a placement that was ended by [Student’s] entire Team, including his foster parents and the district [and where the] Team picked a date, and [Student] left [Perkins] on that date.”

Based on facts available to me, I find that Perkins is Student’s stay-put placement and that the District must continue to fund Student’s placement at Perkins pending the underlying dispute.

Perkins argues that Perkins

“never sought to terminate [Student’s] placement pursuant to [the planned terminations] regulations. Instead, Perkins followed the lead of [Student’s] Team in a collaborative manner, once it became evident to the Team that the school was no longer able to meet [Student’s] acute needs. The district requested that [Perkins] issue the letter detailing the date on which the placement would end, and [Perkins] did so. At no point did the district or Parents ever request that [Perkins] readmit [Student], until the filing of the hearing request and stay-put motion.”

As such, Perkins asserts that Student’s stay-put placement is the type of special education program and services, rather than a specific school such as Perkins.

Perkins’ argument fails for several reasons. First, the fact that the parties agreed that Perkins could no longer meet Student’s needs is not dispositive with respect to the question of stay-put.[[18]](#footnote-18) At its most basic interpretation, stay-put is the last educational placement a student attended prior to a placement dispute, the placement delineated in the “last implemented IEP”[[19]](#footnote-19), regardless of whether the placement is no longer appropriate.[[20]](#footnote-20) The purpose of the stay-put provision is continuity and preservation of the “status quo”[[21]](#footnote-21); it is a procedural safeguard[[22]](#footnote-22) rather than the promise of substantive FAPE.[[23]](#footnote-23) The bottom line is that Perkins is the placement identified in Student’s current, active, accepted, and most-recently implemented IEP.[[24]](#footnote-24)

Moreover, 603 CMR 18.05(7) reinforces the stay-put entitlement by obligating the private program to “make a commitment to the public school district or appropriate human service agency that it will try every available means to maintain the student's placement until the local Administrator of Special Education or officials of the appropriate human service agency have had sufficient time to search for an alternative placement.”[[25]](#footnote-25) The regulation applies either to “**termination or discharge** of the student”[[26]](#footnote-26) and makes no distinction about whether the Team collaboratively or the private program unilaterally choses to end a student’s placement.

Here, the exhibits offered as evidence do not unequivocally reflect the Team’s collaborative decision to change Student’s placement.[[27]](#footnote-27) However, even if, *arguendo*, the Team agreed that Student was struggling at Perkins, the Team still proposed Perkins as a placement for Student in the IEP dated 10/5/2023 to 10/4/2024, and it is the placement which Parents accepted and anticipated that Student would attend until the conclusion of the IEP period or the identification of a new placement. Although Perkins sought to help transition Student to a new placement, as of the end of May and the beginning of June 2023, Perkins was aware that Student had no other placement; in fact, the District inquired if Perkins would maintain Student longer, and Perkins informed the District that it must “maintain the discharge date of June 23rd, 2023”. Subsequently, Perkins ]terminated Student on said date without following the procedures established by the regulations for a planned termination, despite the termination having been planned for June 23, 2023. [[28]](#footnote-28) As such, I find that Perkins improperly terminated Student’s placement.

Perkins’ argument that “even if this matter did involve a termination initiated by [Perkins], the fact would remain that stay-put does not apply to specific private schools, but rather to the array of services contained in the last-accepted IEP” is unpersuasive.[[29]](#footnote-29) Some courts have concluded that

“[t]o the extent that a new setting replicates the educational program contemplated by the student's original assignment and is consistent with the principles of mainstreaming and affording access to a FAPE, the goal of protecting the student's educational placement served by the stay-put provision appears to be met. Likewise, where a change in location results in a dilution of the quality of a student's education or a departure from the student's LRE-compliant setting, a change in educational placement occurs.”[[30]](#footnote-30)

In fact, a “number of other federal court decisions, make clear that the educational impact upon the student may be considered in determining whether a student's stay put placement is the specific school that he has been attending.”[[31]](#footnote-31) However, in order for a Hearing officer to determine whether “a change in location results in dilution of the quality of a student’s education” or whether the modification to the student's program is likely to affect the student's learning experience in some significant way[[32]](#footnote-32), there must be an actual alternative program for the Hearing Officer to consider.

Here, there is no such program. Keystone is not currently a viable option for Student, and both Perkins and the District were aware of its nonviability for Student at the end of May 2023, well in advance of Student’s proposed termination date of June 23, 2023. Even in cases where a private special education school has been found to fully follow the required termination procedures, Hearing Officers have concluded that if, at the time of that hearing, no appropriate placement was available,[[33]](#footnote-33) the stay-put placement was the private school placement, because, “[a]s 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 [the] [s]tudent does not have any placement in which to remain during the pendency of this matter,” and the removal of the private school as the stay-put placement would [leave] the student without any educational placement.[[34]](#footnote-34)

In the instant matter, I see no reason to ignore 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.[[35]](#footnote-35) Where, in the present matter, “there [is] no emergency” involving the Student, the “law entitles [Student] to stability while the parties determine the FAPE issues underlying the hearing request.”[[36]](#footnote-36) Student has not attended the ESY session at Perkins through no fault of his own; Perkins is the only program he has known for 2 years; it is the program identified in his “last accepted IEP”[[37]](#footnote-37); it is his last implemented placement[[38]](#footnote-38); and, no other program is currently available to him. As such, Student’s stay-put placement is Perkins. Any change of placement at this time would defy the intent of the IDEA’s stay-put provision.[[39]](#footnote-39)

Perkins has in fact indicated that it would, under certain conditions, be willing to consider having Student return while a successor placement is sought. Perkins must re-admit Student immediately and the District must continue to fund Student’s placement at Perkins during the pendency of the instant dispute.[[40]](#footnote-40)

I note that I am troubled by the untenable situation in which Student finds himself as a result of the action/inaction of those responsible for ensuring that he is provided a FAPE. I strongly encourage the District to pursue its referral efforts with vigor.

**ORDER:**

*Parents’ Motion to Enforce Stay-Put* is hereby **ALLOWED**.

By the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir
Dated: July 31, 2023

1. In further support of *Parents’ Motion to Waive Oral Arguments on* *Parents’ Motion to Enforce Stay-Put*, Parents provided *Affidavit of [Mother]*. [↑](#footnote-ref-1)
2. Since, on July 21, 2023, the matter was found to meet the standard for an accelerated hearing, pursuant to Rule II D of the *Hearing Rules of Special Education Appeals,* the Hearing Officer is precluded from allowing postponements in the matter. See BSEA Hearing Rule D(4)(a) (“For matters assigned accelerated status, no postponements will be granted”). [↑](#footnote-ref-2)
3. BSEA Hearing Rule VI(D) states,

“If a hearing on a motion is warranted, a Hearing Officer shall give all parties at least three (3) calendar days notice of the time and place for hearing. A Hearing Officer may rule on a motion without holding a hearing if: delay would seriously injure a party; testimony or oral argument would not advance the Hearing Officer's understanding of the issues involved; or a ruling without a hearing would best serve the public interest.” [↑](#footnote-ref-3)
4. Because the matter was found to meet the standard for an accelerated hearing, pursuant to Rule II D of the *Hearing Rules of Special Education Appeals,* the Hearing Officer is precluded from allowing postponements in the matter. See BSEA Hearing Rule D(4)(a) (“For matters assigned accelerated status, no postponements will be granted”). [↑](#footnote-ref-4)
5. 20 U.S.C. §1415(j); see 34 CFR §300.514; ; M.G.L. c. 71B; 603 CMR 28.08(7); see also *In Re: Framingham Public Schools and Quin*, BSEA #1605247 (Reichbach, 2016); *In Re: Abington Public Schools*, BSEA # 1407763 (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). [↑](#footnote-ref-5)
6. See limiting language, *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: Student v. Hampshire Regional School District (Ruling on Parents’ Motion to Enforce Stay Put),* BSEA # 2103975 (Kantor Nir, 2020) (finding no stay put rights attached to an erroneous increase in reading services to which there was “no meeting of the minds” as the increase “was never discussed at the Team meeting” ); *In Re: Nathan F.,* BSEA # 96-1706 (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). [↑](#footnote-ref-6)
7. *Student & Concord & Natick Public Schools (Corrected Ruling on Mother’s Request for “Stay Put” Order),* BSEA # 18-00182 (Berman, 2017). [↑](#footnote-ref-7)
8. See 20 U.S.C. §1415(j); 34 CFR §300.514. [↑](#footnote-ref-8)
9. *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). [↑](#footnote-ref-9)
10. See*A.W. v. Fairfax County Sch. Bd.,* 372 F.3d 674, 681–83 (4th Cir.2004) (concluding that educational placement referred to an “instructional setting” rather than to the “precise location of that setting” or the “precise physical location where the disabled student is educated). [↑](#footnote-ref-10)
11. See *In Re: Agawam Public Schools and Melmark-New England*, BSEA #1504488 (Berman, 2015). [↑](#footnote-ref-11)
12. See, e.g., *In re: Student v. Belmont Public Schools and Devereux Advanced Behavioral Health*, BSEA # 2103476 and BSEA # 2104694 (Figueroa, 2021) (finding Devereaux to be student’s stay put where no other program had yet to be identified for him); *In re: Chelmsford Public Schools v. Swansea Wood School*, BSEA # 22-03132 (Kantor Nir, 2021) (finding that where at the time of the filing for Hearing, the student “did not have any program available to him in the immediate future,” the private program was his stay put placement). [↑](#footnote-ref-12)
13. *In Re: Lolani*, BSEA # 04-0359 (Byrne, 2003). [↑](#footnote-ref-13)
14. *Id*. [↑](#footnote-ref-14)
15. *Student v. Georgetown Public Schools and Landmark School* *(Rulings On Parents’ Motion For Summary Decision, Parents’ Motion For Stay Put And Landmark School’s Motion For Summary Judgment)*, BSEA # 14-08733 (Oliver, 2014). [↑](#footnote-ref-15)
16. See *AW*, 372 F.3d at 676 (“the term “educational placement” as used in the stay-put provision refers to the overall educational environment rather than the precise location in which the disabled student is educated”); see also *Sherri A.D. v. Kirby*, 975 F.2d 193, 199 n.5 and 206 (5th Cir. 1992) (“educational placement” not a place but a program of services); *Weil v. Board of Elementa1y and Secondary Educ*., 931 F.2d 1069, 1072 (5th Cir. 1991) (change of schools under the circumstances presented in this case not a change in “educational placement”). [↑](#footnote-ref-16)
17. *In re: Susan S. and The Cotting School and Falmouth Public School*, BSEA # 05-1581 (Sherwood, 2004); see also *In Re: Student v. Agawam Public Schools & Melmark New England,* BSEA # 15-04488 (Berman, 2015) (the “fundamental purpose of ‘stay put’ … is to ensure stability for the student regardless of conflicts between and among the adults”). [↑](#footnote-ref-17)
18. See *E. E. v. Norris Sch. Dist.,* 4 F.4th 866, 873 (9th Cir. 2021) (denying a California district's request to create an exception to the IDEA's pendency provision that would keep parents from invoking stay-put protections if they allege the current placement failed to offer FAPE). [↑](#footnote-ref-18)
19. See *In re: Chelmsford Public Schools v. Swansea Wood School*, BSEA # 2203132 (Kantor Nir, 2021) (“I find that the District has met its burden to show that Swansea Wood is Student’s stay put placement until he is able to attend Whitney Academy. Swansea Wood is an approved private residential special education school program. Hence, students who are publicly funded and attend Swansea Wood are entitled to the full protections of state and federal special education laws and regulations, including stay put. Student has attended Swansea Wood since November 2020 pursuant to two consecutive, fully accepted IEPs (for the period 8/11/2020 to 6/28/2021 and for the period 8/3/2021 to 8/2/2022, respectively), both of which place Student at Swansea Wood. Swansea Wood participated in Student’s annual Team meeting on August 11, 2021 and proposed Swansea Wood for Student. Parent accepted this proposal. Swansea Wood is therefore Student’s ‘last accepted placement’”) (internal citations omitted). [↑](#footnote-ref-19)
20. *E. E. by & through Hutchison-Escobedo v. Norris Sch. Dist*., 4 F.4th 866, 873 (9th Cir. 2021)(denying a California district's request to create an exception to the IDEA's pendency provision that would keep parents from invoking stay-put protections if they allege the current placement failed to offer FAPE). [↑](#footnote-ref-20)
21. *Student & Concord & Natick Public Schools (Corrected Ruling on Mother’s Request for “Stay Put” Order),* BSEA # 18-00182 (Berman, 2017). [↑](#footnote-ref-21)
22. See *id*. **(**“The ‘stay put’ rule is a fundamental procedural protection afforded parents and students by the IDEA and the Massachusetts special education statute, G.L. c. 71B”). [↑](#footnote-ref-22)
23. See also *In re: Student v. Belmont Public Schools and Devereux Advanced Behavioral Health,* BSEA #2103476 (Figueroa, 2020) (“Long term, Devereux is not the appropriate placement for Student, but … Student is legally entitled to stay-put at Devereux”); *In re: Student and Quincy Public Schools and League School of Greater Boston,* BSEA # 22-02940 (Mitchell, 2021) (“League is stay-put for Student, even if I were to find that Student was not able to receive a FAPE at League, that Student would not be deprived of a FAPE if he were to leave League, and that League had properly implemented the emergency termination procedures”). [↑](#footnote-ref-23)
24. *E. E.*, 4 F.4th at 872 (stay-put “is typically the placement described in the child's most recently implemented IEP.” [↑](#footnote-ref-24)
25. 603 CMR 18.05(7)(b). [↑](#footnote-ref-25)
26. 603 CMR 18.05(7)(a) (emphasis added). [↑](#footnote-ref-26)
27. Although Perkins’ *Opposition* states that the “Team met on October 5, 2022, and all parties agreed that for Student to be successful and meet his educational needs he would require a higher level of care, and further agreed that the process of sending out packets to alternative placements should occur,” the N1 dated October 18, 2022 states that Perkins informed Parent that “they,” rather than the Team, “believe [Student’s] needs would be better met in a different placement.” [↑](#footnote-ref-27)
28. 603 CMR 18.05(7)(c)(1). [↑](#footnote-ref-28)
29. See *In re: Student and Quincy Public Schools and League School of Greater Boston*, BSEA # 22-02940 (Mitchell, 2021) (“In situations where a student would be left without an appropriate alternate placement, the BSEA has determined that a private school may have stay-put obligations beyond those set forth in the State regulations, even in the case of an emergency termination based on safety concern”). Notably, here, Perkins’ concerns were not so extreme as to necessitate an emergency termination. (P-1, P-11) [↑](#footnote-ref-29)
30. *A.W.,* 372 F.3d at 677. [↑](#footnote-ref-30)
31. See *In Re: Dracut Public Schools and Melmark New England*, BSEA # 09-1566 (Crane, 2008) (citing to 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 change to qualify for the stay put provision"); Sherri, 975 F.2d at 206 (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, 747 F.2d at 153-154 ("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-31)
32. See DeLeon, 747 F.2d at 153-154. [↑](#footnote-ref-32)
33. *Framingham and Guild and DDS (Ruling).* [↑](#footnote-ref-33)
34. *Id.;* see also *In Re: Belmont and Devereaux,*BSEA #2103476 (Figueroa, 2020) (stay-put applied to a private residential special education program that was found not to be appropriate for a student, but for which modifications could be made, until another appropriate program was identified, and for whom, at the time of the hearing, no viable alternative educational placement had been identified). [↑](#footnote-ref-34)
35. See *Drinker*, 73 F.3d at 864-65. [↑](#footnote-ref-35)
36. *Student v. Georgetown Public Schools and Landmark School;* see *In Re: Student v. Agawam Public Schools & Melmark New England* (where “there has been no misconduct by the Student,” 603 CMR 18(7)(c) which “provides for a ‘planned’ termination process to be used in non-emergency situations,” does not “immuniz[e] private schools from federal ‘stay put’ requirements”). [↑](#footnote-ref-36)
37. See 20 U.S.C. §1415(j); 34 CFR §300.514. [↑](#footnote-ref-37)
38. See *In re: Chelmsford Public Schools v. Swansea Wood School*. [↑](#footnote-ref-38)
39. *In Re: Lolani* (“One of those fundamental rights is the right to “stay put”. Had the drafters intended to strip private school students of a right accorded to public school students they would have said so”).“‘Stay Put’ is necessarily an emergent and temporary situation …. [Where] there is evidence to suggest that the Student is not actually receiving a free, appropriate public education in her ‘Stay Put’ placement, the parties must be prepared to address the substantive programmatic issues quickly.” [↑](#footnote-ref-39)
40. [↑](#footnote-ref-40)