**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. American School for the Deaf BSEA # 2405677**

**RULING ON**

**AMERICAN SCHOOL FOR THE DEAF’S MOTION TO DISMISS,**

**AND, IN THE ALTERNATIVE,**

**MOTION TO JOIN**

This matter comes before the Hearing Officer on the December 21, 2023 *American School for the Deaf’s (ASD) Motion to Dismiss and Opposition to the Parent’s Emergency Motion to Enforce Stay Put* (*Motion to Dismiss*) seeking to dismiss the *Emergency Motion to Enforce Stay Put* filed by Parent on December 11, 2023 on the grounds that

“(1) the Student’s individualized education plan (“IEP”) does not include residential services and the Hearing Officer lacks jurisdiction to order the Department of Children and Families (“DCF”) to pay for non-educational residential services; (2) ASD is not an appropriate party to this matter as its relationship with the Lowell Public Schools (“LEA” or “Lowell”) is purely contractual, Lowell is not a current party to this matter and the Hearing Officer lacks jurisdiction to resolve contractual issues between ASD and the LEA; and (3) the Parent has no entitlement to stay put protections because there is no issue in dispute for which ASD would be a temporary placement during the pendency of such dispute.”

In addition, ASD asserts that, in the alternative, if the *Motion to Dismiss* is denied, Lowell should be joined as a necessary party to this matter (*Motion to Join*), but, “[b]ecause the Hearing Officer has jurisdiction over a state agency only where that agency is providing services to ensure FAPE, ASD is not requesting that DCF be joined.”

On December 27, 2023, Parent filed *Parent’s Opposition To ASD’s Motion To Dismiss* (*Opposition*) asserting that ASD’s *Motion to Dismiss* should be denied:

“First, ASD only requests in its Motion that the Hearing Officer dismiss the Parent’s Emergency Motion for Stay Put, and does not request that the Hearing Officer dismiss the underlying case, or that the Hearing Officer grant any other alternative relief. Second, ASD fails to meet its burden of showing that the BSEA lacks jurisdiction over ASD. Third, ASD fails to meet its burden of showing that Parent has not stated a claim upon which relief can be granted.”

Neither Lowell nor DCF chose to respond to either *Motion.*

For the reasons articulated below, ASD’s *Motion to Dismiss* is hereby **DENIED**. ASD’s *Motion to Join* is hereby **ALLOWED**, and Lowell Public Schools is **joined** as a necessary party to the instant appeal. Additionally, DCF is also **joined**, *sua sponte*, as a necessary party.

**FACTUAL FINDINGS AND RELEVANT PROCEDURAL HISTORY[[1]](#footnote-1):**

1. Student is an eighteen-year-old, 12th grade, medically complex student, diagnosed with Cystic Fibrosis - Ciliary Dyskinesia type, End Stage Renal failure, legal blindness, Mixed Conductive and Sensorineural hearing loss in both ears, intellectual disability, Attention Deficit Hyperactivity Disorder, and mood disorder. Student requires regular dialysis, breathing treatments and medications that are essential to maintaining her health.
2. Student’s mother has temporary guardianship of Student and is applying for full guardianship.
3. Parent resides in Lowell, Massachusetts, and Lowell is the local educational agency responsible for Student.
4. Through a cost-share between Lowell and DCF, Student has been attending the PACES Program at ASD as a residential student since February 2021. The placement page of her last-accepted Individualized Education Program (IEP) lists the placement as ASD, a private, separate day school.
5. Student visits home every weekend. According to Parent, Student’s needs are such that she is unable to return home on a permanent basis.
6. ASD is not a medical facility, and Student’s dialysis treatments take place off site.
7. Student engages in challenging behaviors, including refusal of medical treatment and medications, and elopement.
8. Student has poor grades and has not made much progress on the goals and objectives of her IEP.
9. In April 2023, ASD first notified Lowell and DCF that Student would be discharged from the program. At said meeting with Student’s providers (a “Provider Meeting”) attended by Lowell, DCF representatives and Parent, ASD expressed concerns about the Student’s safety at ASD in light of her non-compliance with medical treatment and medications. At that time, Parent, Lowell and DCF agreed that a change of placement would be appropriate.
10. Without success, Lowell and DCF have sent numerous packets to other potential placements and are continuing to search for a placement. They both support maintaining ASD as the Stay-Put placement until an appropriate alternative placement can be found.
11. Because DCF’s contract with ASD was to expire in July 2023, DCF requested a short-term extension of its contract with ASD to provide Lowell and DCF more time to secure successor residential and educational placement(s) for the Student. The contract, executed by ASD on August 8, 2023, states, in relevant part: “Contract performance shall terminate as of December 31, 2023, with no new obligations being incurred after this date unless the Contract is properly amended.” ASD agreed to this final extension of the contract with DCF, through December 31, 2023, with the understanding that the Student would disenroll on or before December 15, 2023, the last day before the winter break.
12. At a Team meeting on December 5, 2023, ASD agreed to add a one-to-one nursing service that had previously been in Student’s IEP. Despite this addition, however, ASD refused to change its planned discharge date.
13. Student’s IEP dated from 12/13/2022 to 12/06/2023 lists ASD as Student’s separate private day placement. The Additional Information section states, in part, that “Lowell Public Schools and DCF agree to cost-share [Student’s] placement at the American School for the Deaf.”
14. On June 16, 2023, Parent partially rejected the IEP and placement, stating that Student requires a residential placement as she is unsafe at home.
15. On December 11, 2023, Parent filed a *Request for Accelerated Hearing* seeking a finding that Student should remain enrolled at ASD until Lowell and DCF are able to secure an appropriate placement for Student.
16. On December 14, 2023, the matter was found to meet the standard for accelerated status. A Hearing in this matter is scheduled to begin on January 10, 2024.

 **LEGAL STANDARDS AND DISCUSSION:**

1. **Motion to Join**
2. *Legal Standard:*

The outcome of ASD’s *Motion to Join* is governed by BSEA *Hearing Rule* I(J) governing joinder and Mass. Gen. Laws ch. 71B, §2A and § 3. The BSEA has jurisdiction to resolve "differences of opinion among **school districts**, **private** **schools**, parents, and **state agencies**."[[2]](#footnote-2) In addition, pursuant to BSEA *Hearing Rule* I(J):

"Upon written request of a party, a Hearing Officer may allow for the joinder of a party in cases where complete relief cannot be granted among those who are already parties, or if the party being joined has an interest relating to the subject matter of the case and is so situated that the case cannot be disposed of in its absence. Factors considered in determination of joinder are: the risk of prejudice to the present parties in the absence of the proposed party; the range of alternatives for fashioning relief; the inadequacy of a judgment entered in the proposed party's absence; and the existence of an alternative forum to resolve the issues."

In order to join a party, the Hearing Officer must determine whether "additional services from the state agency (over and above those services that are the responsibility of the school district) may be necessary to ensure that the student will be able to access or benefit from the school district's special education program."[[3]](#footnote-3) Specifically, a BSEA “hearing officer may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the department of children and families … **in addition** to the program and related services to be provided by the school committee."[[4]](#footnote-4) Additional services from a human services agency may be considered but only if such additional services may be necessary to ensure that the student will be able to access or benefit from the school district's special education program and services.[[5]](#footnote-5) The "in addition to" language means that if a student's needs can be met through the special education and related services which are the responsibility of the school district, complete relief can be granted without the need for the human service agency to become a party. This language maintains the school district as the entity with sole responsibility for all services to which the student is entitled pursuant to state and federal special education law.[[6]](#footnote-6)

1. *Application of Legal Standard:*
2. Lowell Must Be Joined as a Necessary Party.

ASD seeks joinder of Lowell. ASD is correct that, as the responsible LEA, Lowell must be joined as a necessary party in the instant appeal as “complete relief” cannot be granted in Lowell’s absence. Specifically, Lowell is fiscally and programmatically responsible for Student. As such, if I find that ASD is Student’s stay put placement, Lowell would be responsible for supporting said placement both fiscally and programmatically. If I find that ASD is not Student’s stay-put placement, then Lowell would be charged with locating and funding an alternative placement. Therefore, ASD’s *Motion to Join* is **ALLOWED, and** **Lowell is hereby joined as a necessary party**.

1. DCF Must Be Joined as a Necessary Party.

According to ASD, DCF is not a necessary party to the instant dispute because, in part, the Hearing Officer “lacks jurisdiction to order DCF to provide non-educational residential services.” However, 603 CMR 28.08(3) states, in relevant part, that the Hearing Officer “may determine, in accordance with the rules, regulations and policies of the respective agencies, that services shall be provided by the Department of Children and Families … in addition to the IEP services to be provided by the school district.” The “services” referenced are not, as asserted by ASD, limited to educational services; rather they are **any** services, including “non-educational” services, that the relevant state agency is allowed by its own regulations to provide that are necessary to allow the Student to receive a FAPE.[[7]](#footnote-7) Such services are “**in addition** to the program and related services to be provided by the school committee."[[8]](#footnote-8) Furthermore, whether the services provided by DCF are necessary to ensure Student’s access to a FAPE is irrelevant at this time. The only issue before the Hearing Officer is “stay put,” and, if DCF’s provision of services is necessary to maintain Student’s entitlement to stay-put placement, then DCF is a necessary party in this dispute.

Relying on *Norton Public Schools*, 115 LRP 24118 (MSER 2015), ASD further asserts that the Hearing Officer cannot order ASD to reinstate its contract with DCF. ASD’s reliance on *Norton* is misplaced. This matter is distinguishable from *Norton Public Schools*, 115 LRP 24118 (MSER 2015), in which two rulings were issued. Specifically, in *In re: Harrison & Isabella (Ruling on Parents’ Motions for Stay Put)*, BSEA # 15-04277 & BSEA # 15-04282[[9]](#footnote-9) (Reichbach and Putney-Yaceshyn, April 15, 2015), the Hearing Officers found that where the relationship between Norton and Amego consisted of Norton’s contracting with Amego to provide staff for Norton’s in-district program, the program was not an Amego program but rather a Norton Public Schools program that used Amego staff. As such, the stay put placement was “comprised of the services [students] [had] been receiving pursuant to their [then-]current IEPs. They [were] not entitled to receive these services from Amego.” Applying this analysis, the Hearing Officers concluded that Amego was not a necessary party because the

“key issue [was] that while a dispute [might] exist between Norton and Amego as to relationship between them and whether Amego in fact provided Students with all of the services specified in their IEPs and the Program Description for which Norton contracted with Amego, this dispute [might] be resolved appropriately in another forum. We have already determined in our previous Ruling that Norton retained responsibility for Students’ education while they attended the Amego classroom. It appears, therefore, that in Amego’s absence, there [would] be no impediment to a grant of complete, adequate relief among the other parties. To the extent a determination is made by the BSEA that services are owed to the Parents, it is Norton (as the LEA) that is ultimately responsible for providing those services.”[[10]](#footnote-10)

Where Amego’s relationship with the students in *Norton* consisted solely of Amego’s providing some staff for a Norton Public Schools program, in the instant case, DCF’s involvement with, and legal obligation to, Student is independent of either Lowell or ASD. Moreover, unlike Amego, DCF is willing to enter into agreement with ASD in order to continue to provide Student with a residential placement until a new placement has been identified.

In addition, ASD has an obligation to work with DCF to maintain Student’s placement in a way that Amego, as a Norton Public Schools sub-contractor, did not. Specifically, 603 CMR 18.05(7)[[11]](#footnote-11) reinforces Student’s stay-put entitlement by obligating a 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” (emphasis added). As such, the Hearing Officer has jurisdiction to order both a public school district and a human service agency, such as DCF, to maintain a student placed at an approved private special education program, and, similarly, the Hearing Officer can determine whether a private school placement failed to “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.”

Hence, to decide whether DCF should be joined as a party in the instant matter, I must determine, upon consideration of the joinder factors, whether complete relief may be granted among those who are already parties, or if DCF has an interest relating to the subject matter of the case and is so situated that the case cannot be disposed of in its absence.[[12]](#footnote-12) I must then also decide whether joinder of DCF is in accordance with the agency's rules, regulations, and policies.[[13]](#footnote-13)

Here, DCF has been involved with Student for several years and has an interest in the matter. Specifically, it has been funding Student’s residential placement at ASD since 2021 and has been active in working with Lowell to send referral packets for alternative residential placements for Student. Because I may not be able to fashion the complete relief in DCF’s absence, joining DCF would foster administrative efficiency. Moreover, pursuant to regulations governing DCF, DCF may share the cost of a residential placement for a child under certain circumstances.[[14]](#footnote-14) Therefore, I hereby **JOIN DCF as a necessary party, *sua sponte*** in this matter.[[15]](#footnote-15)

1. **Motion to Dismiss**
2. *Legal Standards:*
3. *Motion to Dismiss*

Pursuant to Rule XVII A and B of the BSEA Hearing Rules and 801 CMR 1.01(7)(g)(3)[[16]](#footnote-16), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the courts in deciding motions to dismiss for failure to state a claim, which require the fact-finder to make a determination based on a complaint or hearing request alone.

To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[17]](#footnote-17) The hearing officer must take as true “the allegations of the complaint, as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”[[18]](#footnote-18) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[19]](#footnote-19)

*2. 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.” Preservation of the “status quo” assures that the student “stays-put” in the last placement the parents and the school district agreed was appropriate. 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.” Generally, the last accepted IEP is the stay-put IEP.

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.” Some circuits have also examined the impact of the proposed change on the student. 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.

1. *Application of Legal Standards:*

In evaluating ASD’s *Motion to Dismiss*under the Legal Standards set forth *supra*, I must take the allegations in Parent’s *Request for Accelerated Hearing* as true as well as any inferences that may be drawn from them in her favor, and must deny dismissal if these allegations plausibly suggest an entitlement to relief. [[20]](#footnote-20) Here, I find that dismissal must be **DENIED**.

I note that here, in contrast to Amego’s status in *Norton,* ASD is an approved private special education program pursuant to 603 CMR 28.09, and Massachusetts regulations contemplate administrative proceedings against private entities involved with publicly funded educational programs.[[21]](#footnote-21) Once approved by the Department of Elementary and Secondary Education (DESE), a private special education program must provide students and parents with the same protections as those awarded to eligible students attending a public school program.[[22]](#footnote-22) Such protections include the right to stay-put placement.[[23]](#footnote-23)

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.” 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. However, at this stage in the proceeding, the Hearing Officer need not determine whether ASD followed proper termination procedures nor whether ASD’s expired contracts are material to the issue of stay-put. As the facts alleged by Parent raise a possible claim for relief, dismissal of the matter is unwarranted. [[24]](#footnote-24)

Nor do ASD’s additional arguments advance dismissal. First, the fact that the parties agree that ASD cannot meet Student’s needs is not dispositive with respect to the question of proper termination nor of stay-put. The “stay-put provision does not … attempt[] to ensure an adequate IEP and whose violation would constitute a denial of a free appropriate public education.”[[25]](#footnote-25) In fact, “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’, regardless of whether the placement is no longer appropriate. The purpose of the stay-put provision is continuity and preservation of the ‘status quo’; it is a procedural safeguard rather than the promise of substantive FAPE.”[[26]](#footnote-26)

Nor does the fact that the parties agree that ASD is inappropriate as a placement mean that there is no “underlying dispute” in this matter. 20 U.S.C. § 1415(b)(6) grants the BSEA jurisdiction over "any matter relating to the identification, evaluation, or **educational placement of the child**, or the provision of a free appropriate public education to such child."[[27]](#footnote-27) In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[28]](#footnote-28) concerning the eligibility, evaluation, **placement**, IEP, provision of special education in accordance with state and federal law, or **procedural protections** of state and federal law for students with disabilities.”[[29]](#footnote-29) This matter concerns Student’s stay-put placement and an alleged violation of Student’s procedural rights, and there is no forum other than the BSEA which Parent can access to protect her child’s rights.[[30]](#footnote-30) In addition, ASD’s assertion that “termination was mutual” and is therefore not in dispute is an oversimplification of the parties’ positions. Specifically, where all the parties may have agreed that Student requires a change in placement, Parent appears not to have been in agreement with the December 15 termination date.

Therefore, taking the allegations in Parent’s *Request for Accelerated Hearing* as true as well as any inferences that may be drawn from them in her favor, as I am required to do in evaluating a *Motion to Dismiss*, I find that Parent has raised allegations that plausibly suggest an entitlement to relief[[31]](#footnote-31) and **DENY** dismissal.

**ORDER:**

ASD’s *Motion to Dismiss* is hereby **DENIED**.

ASD’s *Motion to Join* is hereby **ALLOWED**, and Lowell Public Schools is **joined** as a necessary party to the instant appeal. DCF is also **joined**, *sua sponte*, as a necessary party.

Accordingly, the matter will proceed as follows:

1. The Hearing will take place via a virtual platform on **January 10 and 11, 2024.** On January 10, the Hearing will begin at 9:00AM and conclude at 6:00PM. On January 11, the Hearing will begin at 1:00PM and conclude at 6:00PM. Closing arguments will be presented orally.
2. Exhibits and witness lists are due by the close of business day on **January 3, 2024**. Please provide them to the Hearing Officer at [].
3. If Lowell and/or DCF intend to present their own cases-in-chief, they should inform the Hearing Officer **immediately** as this would impact the time that Parent and ASD will be allotted to present their own cases.[[32]](#footnote-32)
4. The Decision will be issued by January 25, 2024.

By the Hearing Officer:

/s/ Alina Kantor Nir

Alina Kantor Nir
Dated: December 28, 2023

1. These findings are made for the purposes of this Ruling only and are subject to change in future rulings. [↑](#footnote-ref-1)
2. M.G.L. ch. 71B, § 2A; see 603 CMR 28.08(3) (emphasis added). [↑](#footnote-ref-2)
3. See *Lowell Public Schools*, BSEA # 072412, 107 LRP 655543 (Crane 2007). [↑](#footnote-ref-3)
4. M.G.L. c 71B, § 3; see 603 CMR 28.08(3) (emphasis added). [↑](#footnote-ref-4)
5. See *In Re: Arlington Public Schools (Amended Ruling to Join DCF and DDS),* BSEA # 1309210 (Crane, 2013). [↑](#footnote-ref-5)
6. See *In Re: Agawam Public Schools and Mass. Dept. of Children and Families (Ruling on Motion to Dismiss DCF as a Party)*, BSEA # 1403554 (Crane, 2013); see also *In Re: Arlington Public Schools (Amended Ruling to Join DCF and DDS),* BSEA # 1309210 (Crane, 2013). [↑](#footnote-ref-6)
7. See *King v. Pine Plains Cent. Sch. Dist*., 918 F. Supp. 772, 783 (S.D.N.Y. 1996) (“the IDEA applies to all political subdivisions of the state that are involved in educating disabled children, see 34 C.F.R. § 300.2(b), and children in private schools are guaranteed all of the rights that are available under the IDEA to children in public schools. See 34 C.F.R. § 300.401(b). Therefore, we see no reason why Family Court placements like Robert's should not be subject to the stay put provision under appropriate circumstances”). [↑](#footnote-ref-7)
8. M.G.L. c 71B, § 3; see 603 CMR 28.08(3) (emphasis added). [↑](#footnote-ref-8)
9. The matters related to two students and were consolidated for the purpose of these rulings. [↑](#footnote-ref-9)
10. *In re: Harrison & Isabella (Ruling on Amego, Inc.’s Motion to Consolidate and Motion to Dismiss Itself as A Party)*, BSEA # 15-04277 & BSEA # 15-04282 (Reichbach and Putney-Yaceshyn, April 15, 2015). [↑](#footnote-ref-10)
11. Massachusetts regulations at 603 CMR 18.00 et seq. set forth requirements to be satisfied by private special education schools as a condition of DESE approval and receipt of public funds. [↑](#footnote-ref-11)
12. See BSEA *Hearing Rule* I(J). [↑](#footnote-ref-12)
13. M.G.L. c. 71B, § 3. [↑](#footnote-ref-13)
14. *See* 110 CMR 7.404(2) ("If a child's IEP specifies that a private day school program . . . is necessary to meet the child's special education needs and the Department determines that the child should be placed in community residential care for non-educational reasons, then the Department shall share the cost of the placement with the local educational agency." [↑](#footnote-ref-14)
15. 801 CMR 1.01(6) (f) (Joinder of Additional Parties and Amendments of Pleadings) grants the Hearing Officer the authority to join a necessary party sua sponte, stating that “[i]f a Person is later joined or allowed to intervene, or allowed as a substitute Party, the Presiding Officer**, upon his or her own initiative or upon the motion of any Party**, may establish reasonable times for the filing of pleadings or other documents by any additional Party”. (emphasis added). [↑](#footnote-ref-15)
16. Hearing Officers are bound by the BSEA Hearing Rules for Special Education Appeals and the Standard Rules of Adjudicatory Practice and Procedure, 801 Code Mass Regs 1.01. [↑](#footnote-ref-16)
17. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-17)
18. *Blank v. Chelmsford Ob/Gyn, P.C*., 420 Mass. 404, 407 (1995). [↑](#footnote-ref-18)
19. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-19)
20. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-20)
21. See 603 CMR 28.08(3) (The BSEA has jurisdiction to resolve "differences of opinion among **school districts**, **private** **schools**, parents, and **state agencies**") (emphasis added); see also MGL c. 71B, §2A. [↑](#footnote-ref-21)
22. See 20 U.S.C. § 1412 (10)(B)(ii) (“[c]hildren placed in, or referred to, private schools by public agencies . . . the State Educational Agency shall determine whether such schools and facilities meet standards that apply to State educational agencies and local educational agencies and that children so served have all the rights the children would have if served by such agencies”); 34 CFR § 300.146(c) (“Each SEA must ensure that a child with a disability who is placed in or referred to a private school or facility by a public agency … [h]as all of the rights of a child with a disability who is served by a public agency”). [↑](#footnote-ref-22)
23. See *In Re: Lolan*i, BSEA # 04-0359 (Byrne, 2003).Nor does my finding that ASD is properly before the BSEA limit Lowell’s overarching responsibility toward Student for the provision of a FAPE. See 34 C.F.R. § 300.325(c) (“Even if a private school or facility implements a child's IEP, responsibility for compliance ... remains with the public agency and the [state educational agency]”). However, at issue here is not Student’s substantive FAPE entitlement, but rather her entitlement to her stay-put procedural safeguard, the enforcement of which may require ASD’s cooperation. [↑](#footnote-ref-23)
24. See *Golchin,* 460 Mass. at 223. [↑](#footnote-ref-24)
25. *Cordrey v. Euckert*, 917 F.2d 1460, 1468 (6th Cir. 1990). [↑](#footnote-ref-25)
26. *In re: Student v. North Middlesex Regional School District & Dr. Franklin Perkins School (Ruling on Parents’ Motion to Enforce Stay-Put),* BSEA # 2400589 (Kantor Nir, 2023) (internal citations omitted); see *Mackey v. Bd. of Educ.,* 386 F.3d 158, 160-1 (2d Cir.2004) (finding that a stay-put determination must be made without consideration of the merits of the underlying dispute, because the provision “represents Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their then current educational placement until the dispute with regard to their placement is ultimately resolved”). [↑](#footnote-ref-26)
27. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-27)
28. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-28)
29. 603 CMR 28.08(3)(a) (emphasis added).  [↑](#footnote-ref-29)
30. ASD relies on *Moss v. Smith,* 794 F.Supp. 11 (D.D.C. 1992) to argue that “the Hearing Officer should dismiss *Parent’s* *Emergency Motion to Enforce Stay Put* because there is no other pending due process matter concerning the Student.” However, *Moss* was a case of exhaustion; specifically, the court found that the plaintiffs’ filing of the federal action to enforce stay put did not create a “pending proceeding,” because the plaintiffs had “failed to exhaust their administrative remedies relating to their claim under the stay-put provision of the IDEA.” 794 F. Supp. at 14–15. *Moss* does not stand for the proposition that stay put does not apply where the plaintiffs failed to initiate another proceeding pursuant to Section 1415 of the IDEA. [↑](#footnote-ref-30)
31. *Blank*, 420 Mass. at 407. [↑](#footnote-ref-31)
32. The record in this matter will close at 6:00PM on January 11, 2024. [↑](#footnote-ref-32)