**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

In re: Gregory[[1]](#footnote-1) BSEA # 2500690

**RULING ON PARENT’S MOTION FOR STAY-PUT AND PLACEMENT**

 This matter comes before the Hearing Officer on the *Motion for Stay-Put and Placement* (*Motion*) filed by Parent on August 2, 2024, in a matter pending before the Bureau of Special Education Appeals (BSEA).

Parent filed a *Hearing Request* in the underlying case on July 16, 2024 against Lynn Public Schools (Lynn or the District). In it, Parent asserts that Lynn’s proposed placement of Gregory in a substantially separate classroom at a District middle school for the 2024-2025 school year constitutes a change of placement from his previous placement at a separate public day school, triggering his stay-put rights. Furthermore, Parent contends, the proposed placement in the substantially separate classroom is not reasonably calculated to provide Gregory with a free appropriate public education (FAPE) alongside an appropriate peer cohort.

 The Hearing was scheduled for August 20, 2024.

 On July 31, 2024, Lynn filed its *Response to Parent’s Hearing Request*. According to Lynn, the portion of Gregory’s most recently proposed (2024-2025) Individualized Education Program (IEP) that pertains to middle school, which places him in a therapeutic program within the District, does not constitute a change in placement from his previous IEP and/or the portion of the 2024-2025 IEP that pertains to the end of the 2023-2024 school year. Moreover, the proposed 2024-2025 IEP is reasonably calculated to provide Gregory with a FAPE.

 On August 2, 2024, Parent filed the instant *Motion*, seeking an order determining that Gregory’s stay-put placement is a separate day school and immediately placing him at such a school for the 2024-2025 school year.

 During the Conference Call that took place on August 5, 2024, the parties agreed that a *Motion Session* would take place on August 12, 2024 via a virtual platform and that the District would have until that morning to file its *Response* to Parent’s *Motion*.

On August 9, 2024, Lynn filed its *Response to Parent’s Motion for Stay-Put and Placement*, along with four supporting exhibits: placement pages for several IEPs and an affidavit signed by Christina Colella, Administrator of Special Education. The District asserts that that although the placement pages for Gregory’s proposed 2024-2025 IEP, listed a “separate public day school” for the completion of Gregory’s fifth grade year at his elementary school but a “substantially separate classroom” for middle school, the latter is actually a continuation of the same small, substantially separate therapeutic program which serves only students on IEPs. Furthermore, the services listed on Gregory’s IEP, which were accepted in full by Parent, are the same in both the elementary and middle school settings. The distinction is simply that while the elementary school Gregory attended during the 2023-2024 school year serves only special education students, the middle school program proposed for 2024-2025 is housed on the third floor of a building that also houses high school programs that serve special education and general education students. Thus, the challenged portion of Gregory’s proposed 2024-2025 IEP provides the same level of services he was receiving previously, and such a lateral move does not trigger stay-put.

The parties participated in a *Motion Session* via a virtual platform on August 12, 2024, at which time they supplemented their written submissions on the issue of stay-put with oral argument.

On August 14, 2024, the parties jointly requested postponement of the Hearing for at least one month to permit them to explore resolution. On August 19, 2024, their request was allowed for good cause and the Hearing was postponed by agreement to October 8, 2024.

For the reasons set forth below, Parent’s *Motion* is hereby DENIED.

**RELEVANT FACTUAL BACKGROUND**

These findings, which involve only those facts relevant to the determination of Gregory’s stay-put placement, are made for the purpose of this *Ruling* only.

1. Gregory, who is eleven years old, resides in Lynn, Massachusetts with his family. He has attended Lynn Public Schools since kindergarten and attended Tracy Elementary School (Tracy) through the end of fourth grade in June 2023.
2. Gregory qualifies for special education services under a primary Emotional disability and a secondary Health disability. He carries diagnoses of post-traumatic stress disorder, social anxiety disorder, separation anxiety disorder, and attention deficit hyperactivity disorder.
3. Gregory was initially found eligible for a 504 plan in February 2021, when he was in second grade.
4. Following multiple behavioral incidents at school, a suicide attempt, and several hospitalizations, an initial IEP eligibility Team meeting was held on June 2, 2023. The Team found Gregory eligible for an IEP and recommended both placement in a substantially separate classroom and an extended evaluation, beginning in September 2023, at Fallon Elementary School (Fallon), Lynn’s in-district, substantially separate public day school. The Team also recommended that Student attend Fallon’s five-week summer program for extended school year (ESY) services.
5. Gregory’s initial IEP, dated 6/20/2023 to 6/1/2024 (2023-2024 IEP), reflects a substantially separate classroom placement, which is checked off on the box on the placement page. The specific location of Tracy is listed for 6/2/2023 – 6/23/2023 and Fallon is listed for 9/6/2023 – To Be Determined. This IEP was accepted in full on June 22, 2023.
6. Following an emergency removal that occurred on June 7, 2023 and a ten-day suspension, Gregory did not return to Tracy.
7. Gregory attended Fallon’s ESY program that summer and began fifth grade there in September 2023 for his extended evaluation.
8. On October 18, 2023, Fallon implemented a behavior intervention plan (BIP) for Gregory.
9. At the end of the extended evaluation period and completion of the FBA,[[2]](#footnote-2) the Team convened on October 23, 2023 and proposed a new IEP, dated 10/23/2023 to 6/1/2024 (Amended 2023-2024 IEP). All of Gregory’s classes and services in the Amended 2023-2024 IEP are on the C-grid. On the placement page, the box “Substantially Separate Classroom” is checked off. Fallon is listed as the specific location.
10. Lynn Public Schools’ website describes Fallon as a “separate public day school for students in grades Pre-k through 5.” The Department of Elementary and Secondary Education (DESE) considers Fallon a separate public day school because there are no general education peers in the building; all students who attend the Fallon are high needs students with disabilities. The District’s explicit goal for them is to provide students the skills to reintegrate back into the regular education school setting. At Fallon, Gregory received all of his services in a small self-contained therapeutic setting.
11. Although Parent signed the Amended 2023-2024 IEP, she did not date her signature, nor did she check any of the boxes to indicate acceptance, rejection, or partial rejection of the proposed IEP.
12. During his time at Fallon, Student rode a District bus to school that transported students both to Fallon and to the Fecteau-Leary Junior/Senior High School (Fecteau-Leary). Gregory reported to Parent and to his in-home providers multiple incidents of bullying on the bus by older students attending Fecteau-Leary, which contributed to increases in his anxiety.
13. On March 28, 2024, Gregory’s Team convened for his annual review. The Team discussed his progress, difficulties on the bus, and upcoming transition to middle school for the 2024-2025 school year, a transition necessitated by the fact that Fallon only serves students through fifth grade.
14. During the meeting, Gregory’s Team proposed Fecteau-Leary as his placement for the 2024-2025 School Year, and the N1 for the meeting notes that the Team had “proposed a continuation of therapeutic supports at Fecteau-Leary Jr. High School’s substantially separate therapeutic program.”
15. Lynn Public Schools’ website describes Fecteau-Leary as the District’s therapeutic, alternative school for students in grades six through twelve who have experienced attendance, behavior, and/or achievement problems. Fecteau-Leary houses three separate programs on three floors: a therapeutic middle school program on the third floor; and a therapeutic high school program and an alternative high school program on the first and second. There are no general education middle school students in the building; students attending Fecteau-Leary’s therapeutic middle school program receive all services in the C-grid (including lunch, recess, and specials) and do not have any inclusion opportunities with general education peers. Fecteau-Leary is not considered a separate day school, however, because general education students attending the alternative high school program are present in the school building.
16. At Fecteau-Leary, Gregory would receive all services in a small self-contained therapeutic setting with peers from his program at Fallon.
17. Parent expressed concern about the proposed placement but agreed to tour Fecteau-Leary. She did so with Gregory, two in-home services providers, and her Counsel.
18. Following the Team meeting on March 28, 2023, the Team proposed an IEP dated 3/28/2024 to 3/27/2025 (2024-2025 IEP), which was issued on April 5, 2024. This IEP maintained Gregory’s goals in the areas of social/emotional/behavioral, occupational therapy (OT), and academic support, and added new goals for reading, writing, and math. The IEP also proposed new A-Grid consultations for counseling (1x30 minutes/month) and OT (1 x 20 minutes/month); adjusted the C-Grid counseling services from 4x15 minutes per week to 1x40 minutes per week; and added to ESY both academic supports (4x270 minutes/week) and continuation of the counseling and OT services he received during the school year. An updated version of Gregory’s BIP was attached to the IEP as a Tier III Behavior Support Plan, as well as an updated safety plan.
19. The 2024-2025 IEP contained two separate placement pages. The first placement page covered the remainder of the 2023-2024 school year at Fallon, through 6/20/2024. The corresponding placement category selected was “Separate Day School – Public.” On the second placement page, pertaining to the 2024-2025 school year, the location specified was Fecteau-Leary, and the corresponding placement category selected was “Substantially Separate Classroom.” The proposed services are the same in each setting.
20. On May 9, 2024, Parent signed both placement pages and returned the IEP. She did not check the acceptance or rejection boxes on either page. Gregory’s Team Chair notified Parent that she had not checked the boxes indicating acceptance or rejection of the IEP and placements.
21. According to Parent, on May 15, 2024, she requested an updated placement page for the 2024-2025 school year, as the placement page indicated the placement was a substantially separate classroom but she believed Fecteau-Leary was a separate public day school like Fallon. Parent contends that Lynn informed her the following day that Fecteau-Leary is not considered a separate public day school because some general education students attend a program housed in the same building. At this point, she invoked Gregory’s stay-put rights at a separate public day school.
22. On either May 17 or May 20, 2024, Parent provided Lynn with a fully executed copy of the IEP response pages with her signature. She accepted Gregory’s placement in the separate public day school at Fallon through the end of the 2023-2024 school year and rejected the proposed placement in a substantially separate classroom at Fecteau-Leary.

 **DISCUSSION**

1. Legal Framework

It is undisputed that Gregory is an individual with a disability falling within the purview of the Individuals with Disabilities Education Act (IDEA) and the state special education statue.[[3]](#footnote-3) The parties agree that Gregory cannot remain at Fallon for the 2024-2025 school year due to his age; the issue is whether stay-put protections require Lynn to place him in a public day school setting until the matter is resolved, or whether he may be placed, as proposed, in a substantially separate classroom at Fecteau-Leary.

Parent bears the burden of persuasion on her *Motion*, as the moving party seeking to demonstrate that Lynn’s proposed change (i.e., placing Gregory in a substantially separate classroom at Fecteau-Leary) violates stay-put.[[4]](#footnote-4)

1. *The Stay-Put Provision*

Under the IDEA’s stay-put provision, unless the school district and the parent otherwise agree, during the time they are engaged in an IDEA dispute resolution process “the child shall remain in the then-current educational placement of the child.”[[5]](#footnote-5) Corresponding Massachusetts regulations echo this principle, stating “during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then-current educational program and placement unless the school district and the parents agree otherwise.”[[6]](#footnote-6) The essential purpose of stay-put 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” in the meantime.[[7]](#footnote-7) This provision reflects Congress’s preference “for maintaining the stability of a disabled child’s placement and minimizing disruption to the child” during this process.[[8]](#footnote-8) Moreover, it ensures that the student remains in the last placement that the parent and school district agreed was appropriate for him until the due process proceeding has resolved.[[9]](#footnote-9)

To determine a student’s stay-put placement, decisionmakers look to the “operative placement,” or the IEP that is “actually functioning at the time the dispute first arises.”[[10]](#footnote-10) Generally, the placement associated with the last accepted, implemented IEP is considered the stay-put placement.[[11]](#footnote-11)

1. *Stay-Put: Location vs. Program*

Neither the IDEA nor the corresponding Massachusetts law defines “current educational placement,” and such determination is “neither rigid nor automatic.”[[12]](#footnote-12) Courts and the BSEA have frequently interpreted the term to mean the type of program in which a student is enrolled, rather than the specific school building or classroom where the student receives services.[[13]](#footnote-13) Beyond this principle, “the specific facts of a particular case guide the determination of whether proposed changes to services or setting would constitute a change of placement that would be precluded by stay-put.”[[14]](#footnote-14) As such, to determine whether a particular proposed change to services or setting violates stay-put principles, decisionmakers focus on the impact of the proposed change on the student, evaluating whether it has a significant[[15]](#footnote-15) or detrimental[[16]](#footnote-16) effect on the student’s education. Insofar as a different classroom or school “replicates the educational program contemplated by the student’s original assignment” and provides a FAPE in the least restrictive environment, the stay-put provision’s aim to protect the student’s educational placement “appears to be met.”[[17]](#footnote-17)

1. Analysis

 “Current educational placement” is not a defined term. It can refer to the services, the program, the placement, and the location referenced in a child’s IEP. The purpose of stay-put is to maintain consistency in the child’s educational program during the pendency of a dispute between the parents and the school district, and courts have acknowledged that a stay-put placement can be maintained at a physically different location if the program is substantially the same for the student, and the change in location does not cause a decrease in the quality of the student’s education.[[18]](#footnote-18) As such, determining whether a proposed change violates stay-put principles is a subjective and fact-intensive inquiry.[[19]](#footnote-19)

Here, the parties agree that Gregory cannot stay at Fallon as he has aged out of the school and thus, the location of his last agreed upon placement is no longer available to him. The instant dispute does not concern the goals, services, and/or accommodations contained in Gregory’s 2024-2025 IEP. It is, rather, a dispute over placement category– more specifically, whether placement in a substantially separate program which Parent has rejected, as opposed to a separate public day school, violates his stay-put rights. To make such determination I must consider the impact on Gregory of this proposed change.[[20]](#footnote-20)

It is undisputed that Gregory’s last fully-accepted IEP, the Amended 2023-2024 IEP, placed him at Fallon through 6/1/2024. It is also undisputed that on this Amended 2023-2024 IEP, Fallon was listed as a substantially separate classroom placement. (Although there is no evidence before me on this point at this early stage in the case, it appears that the checking of the box for a “Substantially Separate Classroom” placement at Fallon in the Amended 2023-2024 IEP was the result of a clerical error.)[[21]](#footnote-21) This IEP was fully accepted and implemented. The 2024-2025 IEP, which listed Fallon as a separate public day school, was accepted by Parent insofar as it pertained to the remainder of the 2023-2024 school at Fallon but rejected as to placement at Fecteau-Leary for the 2024-2025 school year. Parent then asserted Gregory’s stay-put rights to a separate public day school.

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 During the *Motion Session*, the parties agreed that all accommodations, goals, and services on Gregory’s IEP remain the same across both placements. Parent argued that Gregory’s stay-put placement was a self-contained, separate public day school, with all trained, qualified staff, such as at the Fallon. She asserted that to find otherwise would render useless both the placement page of an IEP and DESE’s categorizations of schools. Moreover, she expressed concern that Gregory would be impacted by the general education alternative high school component at Fecteau-Leary because of shared administrative staff and shared space. As such, she requested a determination that Gregory’s stay-put placement is a separate public day school, and an order that Lynn place him in one pending the outcome of the due process hearing.

The District, on the other hand, contends that the substantially separate therapeutic middle school program at Fecteau-Leary is the continuation of Gregory’s current program at Fallon. Lynn argued that Students in the substantially separate middle school program at Fecteau-Leary receive all services in the C-grid, including lunch, recess, and specials. The program has its own clinicians, and students in the middle school therapeutic substantial separate classroom enter the building through a different door than those in the alternative high school program.[[22]](#footnote-22) Further, Gregory would not be included with any general education middle school students as no such cohort exists at Fecteau-Leary. Gregory’s experience would be much the same at Fecteau-Leary as it was at Fallon, and therefore the proposed change actually preserves the status quo to a greater extent than would placement of Gregory in an out-of-district separate public day school.

 Although the parties view this as a purely legal question, and as such declined an evidentiary hearing on the issue of stay-put, I disagree. Stay-put is “neither rigid nor automatic,” and as such the determination as to whether placement at Fecteau-Leary violates Gregory’s right to stay-put is not based solely on the categorization of Fallon and Fecteau-Leary by the DESE.[[23]](#footnote-23) Instead, I must examine how placement at Fecteau-Leary would impact Gregory,[[24]](#footnote-24) specifically whether the delivery of an IEP containing the same goals, services, and accommodations he received at Fallon, in a substantially separate classroom at Fecteau-Leary, would result in a dilution of Gregory’s education.[[25]](#footnote-25) At this point, I cannot say that Parent has proven, by a preponderance of the evidence, that the answer is yes.[[26]](#footnote-26)

**CONCLUSION AND ORDER**

As Parent has not met her burden to establish that placement of Gregory at Fecteau-Leary pending the resolution of the underlying dispute violates his stay-put rights, his stay-put placement is the partially accepted 2024-2025 IEP, with services delivered in Fecteau-Leary's substantially separate therapeutic middle school classroom.

The Hearing is scheduled for 10:00 AM on October 8, 2024 at the Offices of the BSEA, 14 Summer St., Malden, unless the parties request otherwise. Exhibits and witness lists are due by close of business on October 8, 2024.

By the Hearing Officer:[[27]](#footnote-27)

 /s/ Amy Reichbach

Date: August 19, 2024

1. Gregory is a pseudonym chosen by the Hearing Officer to protect the privacy of the Student in documents available to the public. [↑](#footnote-ref-1)
2. Gregory’s functional behavioral assessment (FBA) noted that he demonstrated fewer behaviors at Fallon than he had at Tracy, though he still occasionally presented with non-compliance. The FBA summary suggested that Fallon’s calmer and less chaotic environment likely contributed to Gregory’s improving behavior. [↑](#footnote-ref-2)
3. See 20 U.S.C. §1400 *et seq*.; M.G.L. c. 71B. [↑](#footnote-ref-3)
4. See *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). [↑](#footnote-ref-4)
5. 20 U.S.C. §1415(j). [↑](#footnote-ref-5)
6. 603 CMR 28.08(7). [↑](#footnote-ref-6)
7. *In Re Concord School District*, BSEA # 110594 (Crane, 2010). [↑](#footnote-ref-7)
8. *Verhoeven v. Brunswick Sch. Comm*., 207 F.3d 1, 3 (1st Cir. 1999) (explaining that section 1415(j) is “designed to preserve the status quo pending resolution of challenge proceedings under the IDEA”); see *In Re: Concord and Natick Public Schools*, BSEA # 1800182 (Berman, 2017) (“The purpose of ‘stay put’ is to protect students from unilateral changes in placement by school districts and to reflect 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”). [↑](#footnote-ref-8)
9. See *In Re: Student v. Hampshire Regional School District*, BSEA # 2103975 (Kantor Nir 2020); see also *Doe v. Brookline Sch. Comm.*, 722 F.2d 910, 918 (1st Cir. 1983) (noting that there is a preference, but not a statutory duty, for maintaining the status quo, as freezing “an arguably inappropriate placement and program” for the entirety of review proceedings “would thwart the express central goal of the [IDEA]: provision of a free *appropriate* public education” (internal citations omitted)). [↑](#footnote-ref-9)
10. See *Drinker ex rel. Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 867 (3rd Cir. 1996); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 625-26 (6th Cir. 1990). [↑](#footnote-ref-10)
11. See *Thomas*, 918 F.2d at 626; see also *N.D. v. State Dep’t of Educ.*, 600 F.3d 1104, 1114 (9th Cir. 2010) (“We have interpreted ‘current educational placement’ to mean ‘the placement set forth in the child’s last implemented IEP” (internal citations omitted)); *In Re: Belmont Public Schools and Devereux Advanced Behavioral Health*, BSEA # 2103476 (Figueroa, 2020) (“As used in the stay-put provision, the word ‘current’ generally means the placement and services that are in effect when the parents file their due process complaint, and in most instances, these services will be found in the student’s most recently implemented IEP”). [↑](#footnote-ref-11)
12. See *In Re: Leominster Public Schools*, BSEA # 127450 (Crane, 2012). [↑](#footnote-ref-12)
13. See *N.D.*, 600 F.3d at 1116 (holding that a change in educational placement occurs when a student is moved from one type of educational program to another, such as from regular class to home instruction, or if there is a significant change in the student’s program despite the student remaining in the same setting); *AW v. Fairfax Cnty. Sch. Bd.*, 372 F.3d 674, 682 (4th Cir. 2004) (“the touchstone of the term ‘educational placement’ is not the location to which the student is assigned, but rather the environment in which the educational services are provided”); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003) (“‘placement’ does not mean a particular school, but means a setting”); see also *Hale ex rel. Hale v. Poplar Bluff R-I Sch. Dist.*, 280 F.3d 831, 834 (8th Cir. 2002) (“transfer to a different school building for . . . reasons unrelated to the disabled child has generally not been deemed a change in placement”); *In Re: Falmouth Public Schools and The Cotting School*, BSEA # 051518 (Sherwood, 2004) (stay-put right “does not necessarily ensure staying at the same location, but rather, ensures the same kind of program and kind of placement – that, potentially, can be provided at a different location”). [↑](#footnote-ref-13)
14. *Leominster Public Schools*; see *DeLeon v. Susquehanna Comm. Sch. Dist*., 747 F.2d 149, 154 (3rd Cir. 1984); see also *Hale*, 280 F.3d at 833 (describing the determination of whether there has been a change in student’s “then-current educational placement” as a “fact-specific” inquiry that considers the impact of a change of placement on student’s education); *In Re: Belmont Public Schools and Devereux* (“whether a student’s specific school placement must be maintained as his or her stay-put placement is a case-specific inquiry”) (internal citation and quotation marks omitted). [↑](#footnote-ref-14)
15. See *Sherri A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992) (citing *Lunceford v. Dist. of Columbia Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C. Cir. 1984)) (“an educational placement . . . is not changed unless a fundamental change in, or elimination of, a basic element of the educational program has occurred”); *De Leon,* 747 F.2d at 153 (“the touchstone in interpreting section 1415 has to be whether the decision is likely to affect in some significant way the child’s learning experience); see also *Leominster Public Schools* (finding that a proposed placement violated the student’s stay-put rights because it would result in a substantial reduction in the student’s instructional hours). [↑](#footnote-ref-15)
16. See *Fairfax Cnty. Sch. Bd.*, 372 F.3d at 682 (“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”); see also *Tennessee Dep’t of Mental Health v. Paul B*., 88 F.3d 1466, 1474 (6th Cir. 1996) (“one must identify a detrimental change in the elements of an educational program in order for a chance to qualify for the ‘stay-put’ provision”). [↑](#footnote-ref-16)
17. See *Fairfax Cnty. Sch. Bd*, 372 F.3d at 682. [↑](#footnote-ref-17)
18. See *id*. [↑](#footnote-ref-18)
19. See *Hale*, 280 F.3d at 833; *DeLeon*, 747 F.2d at 154; *Belmont Public Schools and Devereux; Leominster Public Schools*. [↑](#footnote-ref-19)
20. See *Hale*, 280 F.3d at 833; *DeLeon*, 747 F.2d at 154; *Belmont Public Schools and Devereux; Leominster Public Schools*. [↑](#footnote-ref-20)
21. Counsel for the District acknowledged that the Department of Elementary and Secondary Education (DESE) categorizes the Fallon as a separate public day school, and the affidavit submitted by Lynn describes it as a “separate therapeutic day school.” [↑](#footnote-ref-21)
22. Parent expressed concern that Gregory might enter the building outside of traditional times, given doctors’ appointments and the like, and, as such, might encounter general education students attending the alternative school. Lynn responded that it could minimize the chance of this happening through planning. [↑](#footnote-ref-22)
23. See *Leominster Public Schools*. [↑](#footnote-ref-23)
24. See *Hale*, 280 F.3d at 833; *De Leon*, 747 F.2d at 154; *Belmont Public Schools and Devereux; Leominster Public Schools*. [↑](#footnote-ref-24)
25. See *Fairfax Cnty. Sch. Bd.*, 372 F.3d at 682; *Sherri A.D.*, 975 F.2d at 206; *De Leon,* 747 F.2d at 153. [↑](#footnote-ref-25)
26. See *Shaffer*, 546 U.S. at 62. [↑](#footnote-ref-26)
27. The Hearing Officer gratefully acknowledges the diligent assistance of legal intern Oliva Stevens in the preparation of this Ruling. [↑](#footnote-ref-27)