

**COMMONWEALTH OF MASSACHUSETTS
BUREAU OF SPECIAL EDUCATION APPEALS**

**Student v. Academy of Pacific Rim Charter School
& Boston Public Schools**

BSEA # 2303241

RULING ON PARENT’S MOTION FOR STAY PUT

PROCEDURAL HISTORY

Parent filed a Request for Hearing on October 7, 2022. She filed a Motion for Stay Put along with her Hearing Request and a supplemental motion along with supporting documents on October 13, 2022. Academy of Pacific Rim (APR) filed its response on October 13, 2022. Boston filed an objection to Parent’s Motion for Stay Put on October 14, 2022. As requested by the Parties, the Hearing Officer heard oral argument on the motion and opposition on October 26, 2022. On October 27, 2022, the Parties submitted additional documentation including, the complete IEP that was proposed by the Team, which included the N1 form, team meeting notes, and a Transition Plan along with an email showing the date it was sent to Parent.

PARENT’S POSITION

Parent argues that when she signed the IEP accepting the portion of the placement providing for a temporary placement at Victor, Boston became programmatically and fiscally responsible for Student’s educational services and Victor became Student’s stay-put placement.

APR’S POSITION

APR states that Student’s current placement is the Victor School, as it was accepted by the Parent on September 27, 2022. It further states that upon Parent’s acceptance of the placement at Victor, programmatic and fiscal responsibility returned to Boston, the school district of residence (“SDOR”). APR agrees that Student’s stay put placement is Victor and argues that Boston is responsible for funding the placement.

BOSTON’S POSITION

Boston argues that it did not agree with APR’s decision to write Victor as a temporary placement on the IEP’s placement page. It further states that APR committed a procedural violation when it wrote a placement page for an out-of-district placement after determining that Boston, the SDOR, had an in-district placement which could meet Student’s needs. Boston argues that APR retains programmatic and financial responsibility because the only part of the IEP that Parent has accepted was for the unlawfully proposed placement at Victor.

FACTS¹

Student is fourteen years old and beginning the ninth grade. He lives within the Boston Public Schools district. He was enrolled in APR on or around October 2021. From July 2022 through September 2022 Student participated in an extended evaluation at the Victor School, funded by APR.

On September 15, 2022 the Team, including Parent, an advocate, an outside clinician, and representatives from APR, Boston, and Victor convened to review the results of Student's extended evaluation at Victor and determine what services Student required. Boston staff discussed two different potential in-district placements. At the end of the meeting the parties agreed that the Parent and APR staff would visit the in-district programs proposed by Boston and the Team would reconvene to discuss placement APR would draft an IEP to incorporate the recommendations from the Victor report.

The Team reconvened on September 26, 2022. The Director of Student Support at APR noted that APR believed that Boston's English High School program could meet Student's needs, while taking into consideration the need for a strong transition plan. APR recommended a two-to-three week placement at Victor with strong collaboration between the schools to accomplish the transition from Victor to Boston. APR stated that it would propose an IEP with placement at Victor for 2-3 weeks and continued placement at English High School after that. APR's attorney reiterated that the team was proposing a short-term placement at Victor limited to transition planning and then placement at English High School. Boston's attorney noted that there was agreement that Student required a significant transition plan with collaboration between Victor and Boston, however, did not commit to the 2- 3 week transition placement at Victor as proposed by APR.

APR issued a proposed IEP with an attached N1 form. The N1 form stated that the services the Team agreed Student required were not available within APR, but were available within the Boston Public Schools, specifically, the substantially separate therapeutic program (internalizing strand) located at English High School. The N1 noted that long-term placement at Victor was rejected, as the services and accommodations the Team determined Student required at the September 15, 2022 meeting are available at English High School. Mother informed the Team that she did not agree with the placement at English High School.

Student's therapist, Erika F. Hamel, MSW, LICSW, wrote a letter to Boston's special education department, dated September 21, 2022. She stated that she believed that placing Student in a placement other than Victor would trigger safety concerns for Student. She urged Boston to consider placing Student at Victor as a long term placement. (Parents' Exh. B)

Although the Team proposed placement in Boston's program, APR issued a placement page reflecting Victor, from September 28, 2022 through October 12, 2022. It referred to it as a "short-term" placement to aid in Student's transition to Boston's program. Boston had agreed to work with Victor to support Student's placement at Boston, but had not agreed to an IEP with a "short-term" placement at Victor due to the immediate availability and appropriateness of its in-

¹ The facts are established for purposes of this Ruling only.

district program. APR issued an IEP with a placement page proposing placement in a private separate day school (Victor) from September 28, 2022 to October 14, 2022 and placement in a substantially separate classroom from October 17, 2022 to February 6, 2023. On September 27, 2022, Mother signed the placement page. She checked the box indicating consent to the placement and wrote: “I consent to the placement at the Victor School only.” She checked the box indicating she refused the placement and wrote: “I refuse the placement at English High School.”

LEGAL STANDARDS

The IDEA’s “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 during the pendency of any administrative or judicial proceeding resulting from a due process complaint unless the parent and the district agree otherwise.”² Preservation of the “status quo” assures that the student “stays put” in the last placement the parents and the local education agency (LEA) agreed was appropriate for him.³ 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.”⁴

Generally, the last accepted IEP is the stay put IEP,⁵ but, more often, this is a nuanced question and an individualized assessment of the facts is required.⁶ 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.”⁷ In general, where parties agree that a placement is for temporary purposes only, no stay put rights attach.⁸ In one BSEA matter, a Hearing Officer concluded that even though an IEP had been accepted by the parents, where it was not yet implemented, maintenance of the status quo called for the student to remain at his last attended placement rather than the one identified in the most recently accepted IEP.⁹

² 34 CFR 300.518(a); 20 U.S.C. §1415(j); 34 CFR §300.514; 603 CMR 28.08(7); *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); *In Re: Framingham Public Schools and Quin*, BSEA #1605247, 22 MSER 12 (Reichbach, 2016); *In Re: Abington Public Schools*, BSEA # 1407763, 20 MSER 198 (Figuroa, 2014).

³ See *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)

⁴ *Student & Concord & Natick Public Schools*, BSEA #18-00182, 23 MSER 210 (Berman, 2017).

⁵ See 20 U.S.C. §1415(j); 34 CFR §300.514.

⁶ See *Student & Concord & Natick Public Schools*, BSEA # 18-00182, 23 MSER 210 (Berman, 2017).

⁷ *Drinker*, 73 F.3d at 867; *Thomas*, 918 F. 2d at 626.

⁸ See *Verhoeven*, 207 F.3d at 10 (1st Cir. 1999) (“a reading of ‘current educational placement’ that includes the temporary ... placement at issue here would thwart the purpose of section 1415(j), [and] we decline to adopt such a reading”).

⁹ See *In Re: Brockton Public Schools v. Student*, BSEA # 16-01536 (Figuroa, 2015) (citing *Thomas v. Cincinnati Bd. Of Educ.*, 918 F.2d 618, 626 (6th Cir. 1990)).

ANALYSIS/CONCLUSION

With the above framework in mind, I turn to the facts of this matter. Student was placed at Victor by APR for an extended evaluation. An extended evaluation is not considered to be a placement.¹⁰ The Department of Elementary and Secondary Education (DESE) has clarified that if “the school district is referring the student to a collaborative or approved special education school for the extended evaluation...[the] collaborative or approved special education school is not the student's placement, but rather is the location where the additional assessment(s) is being conducted.”¹¹ Therefore, “the normal procedural requirements relevant to a student’s educational placement (including stay put) do not apply to an extended evaluation.”¹² Thus, in the instant matter, at the end of Student’s extended evaluation at Victor, he presumably would not have the right to stay put at Victor, as Victor was never his placement.

This case is complicated by APR’s decision to write an IEP which included a placement page providing for a brief (from 9/28/22 – 10/14/22) placement at a private day school, namely, Victor as well as a placement from 10/17/22 – 2/6/23 in a substantially separate classroom at English High School. Instead of accepting or rejecting the proposed placement in full, Parent checked both boxes, accepting the Victor portion of the placement and rejecting the English High School portion. She later asserted that Student has the right to stay put at Victor.

To determine whether Student has the right to stay put at Victor, I must consider, among other things, the Massachusetts regulation pertaining to schools’ obligations with respect to students in charter schools as well as the stay put law cited above.

603 C.M.R. 28.10(6) pertains to students enrolled in program schools, including charter schools.

(6) Program Schools A program school shall have programmatic and financial responsibility for enrolled students, subject only to specific finance provisions of any pertinent state law related to the program school. Specific provisions for program schools are as follows:

(a) For charter schools, Commonwealth of Massachusetts virtual schools, vocational schools, or schools attended under M.G.L. c. 76, § 12A (Metco), when the Team determines that the student may need an out-of-district placement, the Team shall conclude the meeting pursuant to 603 CMR 28.06(2)(e) without identifying a specific placement type, and shall notify the school district where the student resides within two school days.

1. Upon a determination as in 603 CMR 28.10(6)(a), the program school shall schedule another meeting to determine placement, and shall invite representatives of the school district where the student resides to

¹⁰ 603 CMR 28.05(2)(b)(5).

¹¹ *Administrative Advisory SPED 2019-2: Extended Evaluations* which may be found at <https://www.doe.mass.edu/sped/advisories/2019-2.html>.

¹² See *In Re: Sharon Public Schools*, BSEA #09-2797, 14 MSER 411 (Crane, 2008); see also *In Re: Melrose Public Schools & C.M.*, BSEA #07-4987, 13 MSER 70 (Byrne, 2007).

- participate as a member of the placement team pursuant to 603 CMR 28.06(2)(e)(1).
2. The Team meeting convened by the program school shall first consider if the school district where the student resides has an in-district program that could provide the services recommended by the Team, and if so, the program school shall arrange with the school district where the student resides to deliver such services or develop an appropriate in-district program at the program school for the student.
 3. If the placement Team, in accordance with the procedures of 603 CMR 28.06(2)(e), determines that the student requires an out-of-district program to provide the services identified on the student's IEP, then the placement proposed to the parent shall be an out-of district day or residential school, depending on the needs of the student. Upon parental acceptance of the proposed IEP and proposed placement, programmatic and financial responsibility shall return to the school district where the student resides. The school district where the student resides shall implement the placement determination of the Team consistent with the requirements of 603 CMR 28.06(3).

In this case, APR not only invited Boston to the ultimate placement meeting on September 26, 2022, but it also invited Boston to its first Team meeting during which the Team discussed Student's needs and the services which would be required on his IEP. After Parents and APR staff had the opportunity to visit the proposed substantially separate classroom at English High School, the Boston and APR members of the Team found that said program could provide the services Student required and that it would be an appropriate placement for Student. Therefore, pursuant to the regulation cited above, having determined that Boston had an in-district program that could provide the services recommended by the Team, APR should have written an IEP which proposed that placement, English High School. Instead, APR acted outside the authority provided by the regulation. Having made a determination that Boston had a program that could provide Student with appropriate services, APR did not have the authority to propose an out-of-district program, even for a short period of time for transition purposes. APR would only have been authorized to propose an out-of-district placement if the placement Team had determined that Boston did not have a program that could provide the services required by Student's IEP.

APR argues that upon Parent signing the proposed IEP and accepting the temporary placement at Victor School, fiscal and programmatic responsibility for Student transferred to Boston. However, Parent only partially accepted the IEP services and only accepted the portion of the placement that APR was not authorized to offer, the out of district placement at Victor. According to 603 C.M.R. 28.10(6)(a)(3) it is parental acceptance of the proposed IEP and proposed placement that triggers the transfer of programmatic and financial responsibility from the charter school to the SDOR. Since Parent has not accepted the IEP and placement, programmatic and financial responsibility has not transferred to Boston and APR remains programmatically and financially responsible for Student. Therefore, the cost of Student's placement at Victor for the period 9/28/22 – 10/14/22 remains the responsibility of APR.

Finally, the First Circuit has addressed the issue of asserting stay put rights to a temporary placement. In *Verhoeven v. Brunswick School Committee*, 207 F.3d 1 (1999), the court determined that a reading of “current educational placement” that includes a temporary placement would thwart the purpose of §1415(j). The decision goes on to state that “...an explicitly understood temporary placement is at least a risky basis for claiming stay put protection.” *Id* at 10.

For the purposes of determining Student’s stay put placement, the question before me is not whether the stay put program is currently appropriate, but rather whether this was the program last agreed upon as appropriate.¹³ Having determined that Student’s placement at Victor began as an extended evaluation and was extended improperly by APR, it cannot be his stay put placement. It was meant to provide for a transition into the English High School program and was not proposed as a placement, as explicitly stated in the N1 form attached to the most recently proposed IEP. The English High School placement was rejected by Parent, and thus not agreed to by the parties. The last accepted IEP called for placement at APR and as such is Student’s stay put placement.

ORDER

Student’s stay put placement is APR.

Boston and APR’s assented to request to briefly postpone the Hearing due to a conflict in their counsels’ schedules is ALLOWED for good cause. The Parties understand that this postponement extends the 45-day IDEA timeline and delays issuance of the Decision.

As requested by the Parties the Hearing will be on

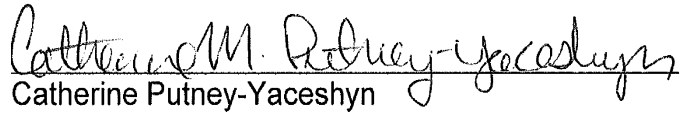
November 17, 2022	10:00 a.m. - 5:00 p.m.
November 18, 2022	10:00 a.m. - 5:00 p.m.

The Hearing will be held remotely, as agreed to by the Parties.

The Parties shall submit and exchange their proposed exhibits and witness lists by **November 9, 2022**.

¹³ See *In Re Quincy Public Schools*, BSEA #1307468, 19 MSER 173 (Crane, 2013) (“The stay-put ruling did not consider, nor would it have been appropriate to consider, the appropriateness of the Clarke School placement. Stay-put’s essential purpose is ‘to preserve the status quo pending resolution of challenge proceedings under the IDEA’ rather than to resolve the question of whether the status quo is reasonably calculated to provide a student with FAPE”).

So ordered by the Hearing Officer,

A handwritten signature in cursive script, reading "Catherine M. Putney-Yacashyn". The signature is written in black ink and is positioned above the printed name.

Catherine Putney-Yacashyn

Dated: November 7, 2022