

“Stay Put”

While parents of students with disabilities would do well to familiarize themselves with all special education laws, policies and procedures, a few concepts stand out as must-knows. These include the legal definitions and practical applications of Effective Progress and Free Appropriate Public Education and “**Stay-Put**.”

Advocates, attorneys and educators often refer to the “stay-put provision of the law.” Actually, the term “stay-put” does not appear anywhere in statute or regulation. The term probably came into use because it so aptly describes the effect this very important procedural safeguard has on a child’s education.

The actual text of the Massachusetts special education “stay-put” regulation is:

***Student's right to IEP services and placement.** In accordance with state and federal law, during the pendency of any dispute regarding placement or services, the eligible student shall remain in his or her then current education program and placement unless the parents and the school district agree otherwise. 603 CMR 28.08(7)*

This simply means that if a parent and school district disagree about a student’s current special education program, the district cannot make changes to that program without the parent’s consent. While the parent and the district work out their disagreement the student’s program must remain unchanged.

For example: suppose an IEP Team tells a parent that their child is doing so well that he no longer needs 3 speech sessions per week. The Team recommends that speech services be reduced to only 1 session per week, and they give the parent a new IEP containing a service delivery grid that lists just 1 speech session per week. If the parent disagrees with this change in speech service all they need to do is tell the Team (preferably in writing):

“I disagree with the recommended change in speech services and I assert my stay-put rights to the currently accepted services of 3 sessions per week.”

Likewise, suppose a school had placed a student in an out-of district private placement. Now the Team is recommending that the student return to an in-district program. If the parents disagree with this recommendation they can exert their stay put rights to the currently accepted placement, in this case the out-of district private school.

The school district, of course, has the right to challenge the parent by filing for a hearing before the Bureau of Special Education Appeals. However, during that entire process the student must stay in their current placement receiving their current services.

If a school district changes a student’s current educational program or placement even though the parent has not agreed to the change, this is a clear violation of the stay put provision of the law. In such cases the parent should file a complaint with the Massachusetts Department of Elementary and Secondary Education or should contact SPEDWatch.

Exceptions to Stay-Put

There are circumstances, related to discipline, in which the school may remove a student from his or her current educational placement even over the objections of the parent. These include (but are not necessarily limited to) removals that total less than ten school days in a single school year; long-term removals for behavior that is not considered a manifestation of the student’s disability; and for special circumstances related to drugs, weapons or serious bodily injury. **[CAUTION: The laws related to disciplinary removals of students with disabilities are numerous and complex. Readers concerned about disciplinary removals should seek out the advice of a qualified advocate or attorney regarding the circumstances of their particular situation.]**

Copyright © 2008 Ellen M. Chambers. All rights reserved. SPEDWatch is not engaged in rendering legal, educational, medical, therapeutic, or other professional advice.