Maintaining the Status Quo:
An Overview of "Stay-Put" Under the IDEA

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Deusdedi Merced, Esq.

923 Saw Mill River Road, # 277
Ardsley, New York 10502
(914) 231-9370 • (914) 231-5461 (facsimile)
dmerced@me.com

I. INTRODUCTION

A. The Individuals with Disabilities Education Act's (IDEA)[1] stay-put provision requires a school district to maintain a student in the then-current educational placement until litigation concludes. Its primary purpose is to maintain the student's "status quo" while a dispute over the student's services or placement is pending.

B. This document reviews essential concepts that are important to understanding the stay-put provision.[2]

II. FRAMEWORK

A. <u>IDEA Statute/Regulation</u>.

1. During the pendency of special education proceedings brought pursuant to the IDEA, unless the State or local agency and the parents of the child otherwise agree, federal and state law require that the child remain in his or her then-current educational placement.[3]

a. Exception – The application of the stay-put provision to matters concerning expedited hearings in the disciplinary

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[1] In 2004, Congress reauthorized the IDEA as the Individuals with Disabilities Education Improvement Act. *See* Pub. L. No. 108-446, 118 Stat. 2647 (Dec. 3, 2004), effective July 1, 2005. The amendments provide that the short title of the reauthorized and amended provisions remains the Individuals with Disabilities Education Act. *See* Pub. L. 108-446, § 101, 118 Stat. at 2647; 20 U.S.C. § 1400 (2006) ("This chapter may be cited as the 'Individuals with Disabilities Education Act.'").

[2] The author acknowledges with appreciation source material in Perry A. Zirkel, "Stay-Put" under the IDEA: An Annotated Overview, 286 Educ. L. Rep. 12 (2013).

[3] *See* 20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a); N.Y. Educ. L. § 4404(4)(a).

context is governed by a different set of rules under the IDEA.[4]

2. If the hearing complaint involves an application for the initial admission to a public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.[5]

3. If the hearing complaint involves an application for initial services under Part B of the IDEA (i.e., ages 3 through 21) from a child who is transitioning from Part C of the IDEA (i.e., ages birth through 3) to Part B and the child is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving.[6]

   If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under § 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.[7]

4. If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of stay put.[8]

B. Authority of IHO to Address. Hearing officers (and courts) have the authority to address disputes regarding stay-put and to determine what constitutes the current educational placement.[9]

C. Trigger. The stay-put provision applies as soon as a request for a hearing is submitted.[10] The procedural safeguards notice must

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[4] *See* 34 C.F.R. § 300.533.
[5] 34 C.F.R. § 300.518(b).
[6] 34 C.F.R. § 300.518(c). *See also A.M. v. New York City Dep't of Educ.*, 583 F. Supp. 2d 498, 51 IDELR 128 (S.D.N.Y. 2008).
[7] 34 C.F.R. § 300.518(c).
[8] 34 C.F.R. § 300.518(d).
[9] *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46704 (August 14, 2006). *See also Letter to Chassy*, 30 IDELR 51 (OSEP 1997); *Letter to Heldman*, 20 IDELR 621 (OSEP 1993); *Letter to Stohrer*, 17 IDELR 55 (OSEP 1990).
[10] *Letter to Winston*, 213 IDELR 102 (OSEP 1987).

inform parents about the child's placement during the pendency of any due process complaint.[11]

D. Automatic Preliminary Injunction. The stay-put provision serves as an automatic preliminary injunction.[12] When stay-put is invoked (i.e., upon filing of the hearing complaint), it is unnecessary for the parent to demonstrate entitlement to the student's then-current educational placement or services under the standards generally governing requests for preliminary injunctive relief (e.g., irreparable harm, likelihood of success).[13] Moreover, it is not necessary to await an appearance before, and decision by, an IHO where the student's current educational placement is not in dispute.[14] Under these circumstances, the school district should implement the stay-put automatically.[15]

E. Judicial Decisions / Federal Policy/Guidance.

1. In a two-tier system, like New York, the first-tier decision determines the student's stay-put placement only when both parties fail to appeal within the applicable timelines. Otherwise, the second-tier decision controls. *Student X v. New York City Dep't of Educ.*, 51 IDELR 122 (E.D.N.Y. 2008) (holding that an unappealed hearing officer decision becomes a student's current educational placement); *Letter to Hampden*, 49 IDELR 197 (OSEP 2007).[16] *But see Winkelman v. Ohio Dep't of Educ.*, 51 IDELR 14 (N.D. Ohio 2008) (holding that an unappealed first-tier decision is not subject to the stay-put provision).

2. The stay-put provision applies during the mandatory 30-day resolution process. "[T]he Act is clear that the public agency must maintain the child's current educational placement during the pendency of the 30-day resolution process, which

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[11] 34 C.F.R. § 300.504(c)(7).
[12] *Zvi v. Ambach*, 694 F.2d 904, 554 IDELR 226 (2d Cir. 1982); *Cosgrove v. Bd. of Educ.*, 175 F. Supp. 2d 375, 35 IDELR 8 (N.D.N.Y. 2001).
[13] *Id. See also Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 52 IDELR 1 (9th Cir. 2009); *Wagner v. Bd. of Educ. of Montgomery County*, 335 F.3d 297, 39 IDELR 122 (4th Cir. 2003); *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859 (3d Cir. 1996)
[14] *Letter to Goldstein*, 60 IDELR 200 (OSEP 2012).
[15] *Id.*
[16] Note, however, that the comments to the 2006 Part B regulations say that 34 C.F.R. 300.518(d) does not apply to first-tier decisions in a two-tier system. *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46710 (August 14, 2006).

is triggered once the parent files a due process complaint under this part, regardless of whether the due process complaint is resolved prior to a due process hearing." *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46709 (August 14, 2006).

3. Generally, the stay-put provision applies to all pending judicial proceedings, including those pending before circuit courts, unless the jurisdiction has stopped it at the district court level. The Second Circuit has not directly addressed the issue. *See*, *e.g.*, *Zvi v. Ambach*, 694 F.2d 904, 554 IDELR 226 (2d Cir. 1982) (" The time frame of the administrative and judicial 'proceedings' under 1415[(j)] is not necessary coterminous with the limits of the school year. Rather, it includes the time necessary to review and adjudicate the merits of a single 'complaint' regarding evaluation or placement of the child. In an appropriate case, the statute would require us to order funding for the duration of the review proceedings."); *cf. Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 52 IDELR 1 (9th Cir. 2009) (in the absence of language to the contrary in the IDEA, the stay-put provision applies to all pending judicial proceedings). *But see Andersen v. Dist. of Columbia*, 877 F.2d 1018, 441 IDELR 508 (D.C. Cir. 1989) (finding that the stay-put provision does not apply beyond the federal district court level).

III. CURRENT PLACEMENT AND CHANGE IN PLACEMENT

A. Identifying the Then-Current Placement.

1. The stay-put provision requires that the student remain in the then-current educational placement during the pendency of the dispute, unless there is agreement to the contrary between the parents and the public agency. The IDEA does not define the term, "educational placement," much less the term, "then-current educational placement."[17]

2. Courts have explained that a child's educational placement "falls somewhere between the physical school attended by a child and the abstract goals of a child's IEP."[18] Just as perplexing, is the term "then-current educational

[17] *Bd. of Educ. v. Schutz*, 290 F.3d 476, 103 LRP 37743 (2d Cir. 2002); *Cosgrove v. Bd. of Educ.*, 175 F. Supp. 2d 375, 35 IDELR 8 (N.D.N.Y. 2001).
[18] *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 25 IDELR 132 (7th Cir. 1996).

placement," which enjoys varying, but related, interpretations amongst the circuits.[19] It has been interpreted to mean:

a. typically the placement described in the child's most recently implemented IEP (Ninth Circuit paraphrasing the Sixth Circuit); and

b. the operative placement actually functioning at the time when the dispute arises (Sixth Circuit, and adopted by the Third Circuit).[20]

B. Change In Placement.

1. An LEA, in the traditional exercise of its discretions, can implement minor changes to the educational program as it may determine to be necessary within the educational programs provided for its students.[21] Said adjustments do not constitute a change in the educational placement sufficient to trigger the prior written notice provisions.[22] Alas, similarly to the term "then-current educational placement," the IDEA does not define what constitutes a change in placement.[23] Certain generally consistent principles have emerged in case law, however.[24]

2. In order for the change to qualify as a change in educational placement, a fundamental change in, or elimination of a

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[19] *See Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176 (9th Cir. 2002); *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859 (3d Cir. 1996); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618 (6th Cir. 1990).

[20] *See Mackey v. Bd. of Educ. for the Arlington Central Sch. Dist.*, 386 F.3d 158, 42 IDELR 2 (2d Cir. 2004) *citing Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 36 IDELR 207 (9th Cir. 2002); *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 23 IDELR 1112 (3d Cir. 1996); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 17 IDELR 113 (6th Cir. 1990). Note, however, that the *Mackey* Court does not accurately describe what the Sixth Circuit said in *Thomas*. Under *Thomas*, stay-put is not simply "[the placement at the time of] the previously implemented IEP," but rather it is the "operative placement actually functioning at the time the dispute first arises." *See Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 17 IDELR 113 (6th Cir. 1990).

[21] *Concerned Parents v. New York City Bd. of Educ.*, 629 F.2d 751, 552 IDELR 147, (2d Cir. 1980), *cert. denied*, 449 U.S. 1078, 110 LRP 34494 (1981).

[22] *See id.*

[23] *Honig v. Doe*, 484 U.S. 305 (1988).

[24] *Wagner v. Bd. of Educ. of Montgomery County*, 36 IDELR 232 (D.Md. 2002).

basic element of the education program, must be identified.[25] "[T]he 'touchstone' is whether the modification 'is likely to affect in some significant way the child's learning experience.'"[26]

3. A case-by-case analysis must be conducted to determine whether a change in placement materially or substantially alters a student's program. In making such a determination, the effect of the change in location on the following factors must be examined: whether the educational program set out in the child's IEP has been revised; whether the child will be able to be educated with nondisabled children to the same extent; whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and whether the new placement option is the same option on the continuum of alternative placements.[27]

IV. VARIETY OF ISSUES/SITUATIONS

A. Unavailability of Last-Agreed Upon Placement. When a program/school is no longer available, courts have either required the public agency to place the student in a program that is materially and substantially similar to the former program[28] or

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[25] *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. 1984). *Compare Knight v. District of Columbia*, 877 F.2d 1025, 441 IDELR 505 (D.C. Cir. 1989) (a change from a private school placement to a public school placement, when that is the only significant difference between programs offered, does not constitute a change in educational placement) *with McKenzie v. Smith*, 771 F.2d 1527, 557 IDELR 119 (D.C. Cir. 1985) (moving a learning disabled child from a full-time special education program to a part-time regular education program did result in a change in educational placement).

[26] *J.R. v. Mars Area Sch. Dist.*, 318 F. App'x 113, 52 IDELR 91 (3d Cir. 2009) *citing DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 556 IDELR 260 (3d Cir. 1984). *See also Board of Educ. Of Comm. High School Dist. No. 218, Cook County v. Illinois State Bd. of Educ.*, 103 F.3d 545 (7th Cir. 1996) (adopting "fact-driven approach" of sister circuits); *Tennessee Dep't of Mental Health and Mental Retardation v. Paul B.*, 88 F.3d 1466, 1474 (6th Cir. 1996); *A.D. v. Kirby*, 975 F.2d 193, 206 (5th Cir. 1992); *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 1582 (D.C. Cir. 1984).

[27] *Letter to Fisher*, 21 IDELR 992 (OSEP 1994). If this inquiry leads to the conclusion that a substantial or material change in the child's educational program has occurred, the public agency must provide prior written notice. *Id.*

[28] *Knight v. Dist. of Columbia*, 877 F.2d 1025, 441 IDELR 505 (D.C. Cir. 1989). *See also Tindell v. Evansville-Vanderburgh Sch. Corp.*, 54 IDELR 7 (S.D. Ind. 2010) (holding that a college internship program was comparable to the

have required parents to seek a preliminary injunction in court.[29]

B. Temporary Placements. Two circuit courts have held that the stay-put provision does not apply to temporary placements.[30]

C. Successive Placement Changes. Successive transfers between placements in a short period of time are not necessarily a change in placement when all of the programs are able to implement a substantively identical IEP.[31]

D. Location Change. Simply changing the location does not extend stay-put protection to the student unless the parents identify, at a minimum, that the location change resulted in a fundamental change in, or elimination of, a basic element of the then-current education placement.[32] Once the parents receive notice and assert that there has been a fundamental change in their child's placement, stay-put protection applies. The school district simply denying that there has not been any fundamental change to the student's placement should not be enough to overcome the parents' right to challenge the district's assertion.[33]

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residential facility which was about to close); *Letter to Fisher*, 21 IDELR 992 (OSEP 1994).

[29] *Wagner v. Bd. of Educ. of Montgomery County*, 335 F.3d 297, 39 IDELR 122 (4th Cir. 2003).

[30] *Verhoeven v. Brunswick Sch. Committee*, 207 F.3d 1, 31 IDELR 51 (1st Cir. 1999); *Leonard v. McKenzie*, 869 F.2d 1558 (D.C. Cir. 1989).

[31] *Board of Educ. Of Comm. High School Dist. No. 218, Cook County v. Illinois State Bd. of Educ.*, 103 F.3d 545 (7th Cir. 1996).

[32] *Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577, 556 IDELR 270 (D.C. Cir. 1984).

[33] *See, e.g.*, *Petties v. Dist. of Columbia*, 238 F. Supp. 2d 114, 38 IDELR 4 (D.D.C. 2002) ("It is disingenuous – indeed, Kafkaesque – for the defendants to argue that the burden is on the parents first to identify a fundamental change in a student's educational program in order to raise the claim that there has been a change in placement even though DCPS has not provided notice to the parents of the nature of such proposed change. This is particularly so when one considers the consequences of accepting this view. If plaintiffs lack the basic information necessary to argue that the proposed change is fundamental, they are not (according to defendants) entitled to the benefit of Section 1415(j) of the statute which provides that a child 'shall remain in the then-current educational placement' during the pendency of any due process proceedings provided by the statute .... To accept defendants' position would have the effect of allowing DCPS to move any child from any school at any time without prior notice to the parents -- even though there is an IEP, a settlement agreement or a hearing officer

E. Grade/Level Changes. OSEP has previously opined that it is not intended that a child with disabilities remain in a specific grade and class pending an appeal if s/he would be eligible to proceed to the next grade and the corresponding classroom within that grade.[34] A possible exception exists where promotion/retention is at issue.[35] "While, in general, building or classroom assignment issues, including grade level assignments, may be matters that are governed by other State or local criteria and decision-making mechanisms, those determinations must be made consistent with a child's IEP or placement."[36] The IHO would have jurisdiction to decide whether, under the particular facts and circumstances, the grade and classroom assignment relates to the student's provision of FAPE or placement.[37]

F. Graduation. Graduating a disabled student constitutes a change in educational placement under the IDEA.[38] As such, the stay-put provision applies during the pendency of proceedings that address whether a disabled student has met the requirements for graduation.[39]

G. Staff Assigned/Provider Contracted. Generally, the school district maintains the management discretion regarding which staff will be assigned to implement an IEP or whether the district will retain the services of a contracted provider. The staff member or contracted provider must be qualified to implement the IEP.[40] When the parents seek to retain the services of a specific provider during the pendency of the hearing, the IHO must consider the qualifications of the proposed staff member or contracted provider, as well as the IEP, to determine whether the individual is uniquely qualified to

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determination in place. Such a reading of the statute is nonsensical and such a result is untenable") (internal citations omitted).

[34] *Analysis and Comments to the Regulations*, Federal Register, Vol. 64, No. 48, Page 12616 (March 12, 1999).

[35] *See Letter to Caroll*, 43 IDELR 116 (OSEP 2004).

[36] *Id.*

[37] *Id.*

[38] 34 C.F.R. § 300.102(a)(3)(iii). Graduating a student while a dispute over the student's graduation is pending can amount to a stay-put violation. *See R.Y. v. State of Hawaii, Dep't of Educ.*, 54 IDELR 4 (D. Haw. 2010); *Kevin T. v. Elmhurst Cmty. Sch. Dist. No. 205*, 34 IDELR 202 (N.D. Ill. 2001).

[39] *Cronin v. East Ramapo Cent. Sch. Dist.*, 689 F. Supp. 197, 441 IDELR 124 (S.D.N.Y. 1988).

[40] 34 CFR § 300.156. *See also Letter to Anonymous*, 49 IDELR 44 (OSEP 2007) (extending the highly qualified personnel requirement to compensatory education providers).

provide the service(s) consistent with the IEP.

H. Extracurricular Activities. Stay-put protection for extracurricular activities is dependent on whether the activity in question is part of the educational placement. If participation in an extracurricular activity is part of the educational placement, the expectation is that it would be included in the student's individualized education program (IEP). If it is included in the student's IEP, it must be considered a part of the student's present educational placement and the student has a right to continue to participate. If the activity is not included, the stay-put provision may not apply and the student may not have a right under the IDEA to continue to participate in the extracurricular activity. Any disagreements as to what is the child's current educational placement for purposes of stay-put may be resolved by a hearing officer or by an appropriate court.[41]

I. Tuition Reimbursement Cases. Once the parents' challenge succeeds at the first tier, and the school district does not appeal, or at the second tier, consent to the private placement is implied by law, and the requirements of § 1415(j) become the responsibility of the school district.[42] However, if the parent succeeds at the first tier, and the school district does appeal, the original placement (where the student received services at the time the hearing request was made) is the student's placement until the State review officer renders a decision.[43]

1. Recoupment – Responsibility for stay-put tuition is absolute, and not subject to recovery by the school district should it ultimately prevail.[44]

2. Possible Exception – Unless the court or the IHO reaches the merits of the appropriateness of the unilateral placement, a court or the IHO may not imply a "current educational

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[41] *Letter to Heldman*, 20 IDELR 621 (OSEP 1993).
[42] *Bd. of Educ. v. Schutz*, 290 F.3d 476, 103 LRP 37743 (2d Cir. 2002). *See also Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 52 IDELR 1 (9th Cir. 2009); *St. Tammany Parish Sch. Bd. v. State of Louisiana*, 142 F.3d 776, 28 IDELR 194 (5th Cir. 1998); *Susquenita Sch. Dist. v. Raelee S.*, 96 F.3d 78, 24 IDELR 839 (3d Cir. 1996).
[43] *Letter to Hampden*, 49 IDELR 197 (OSEP 2007).
[44] *New York City Dep't of Educ. v. S.S.*, 54 IDELR 85 (S.D.N.Y, 2010); *Cf. Dist. of Columbia v. Vinyard*, 901 F. Supp. 2d 77, 60 IDELR 7 (D.D.C. 2012) (staying an award of reimbursement for 2011- 2012 school year until the outcome of the appeal but requiring the school district to pay for the private school for the 2012 – 2013 school year pursuant to the stay-put provision).

placement" for purposes of § 1415(j).[45]

J. Discipline. In the discipline context, stay-put is governed by a different set of rules. Specifically, 34 C.F.R. § 300.518(a) carves out an exception when either the parent or the school district has made an appeal under 34 C.F.R. § 300.532.

Pursuant to the IDEA, parents who disagree with any decision regarding placement or with a finding that the child's behavior is not a manifestation of the child's disability, may appeal the decision by requesting a hearing.[46] The IDEA affords the parents an opportunity for an expedited due process hearing.[47] Similarly, a school district has right to an expedited due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others.[48]

When an appeal under 34 C.F.R. § 300.532 has been made by either the parent or the school district, the child must remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer or until the expiration of the time period specified in 34 C.F.R. § 300.530(c) or 34 C.F.R. § 300.530(g), whichever occurs first, unless the parent and the public agency agree otherwise.[49]

In other words, the stay-put in discipline cases is the removed setting (i.e., the IAES) pending the decision of the hearing or the expiration of the removal, whatever occurs first.

K. Transfer.

1. From Part C. The IDEA regulations now provide that a school district is not required to provide Part C services that a child had been receiving when the child is no longer eligible for Part C services because the child has turned three. A child who previously received services under Part C, but has turned three is no longer eligible under Part C, and is

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[45] *See, e.g., L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 109 LRP 17056 (9th Cir. 2009).
[46] 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).
[47] 34 C.F.R. § 300.532(c).
[48] 20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a); 34 C.F.R. § 34 C.F.R. § 300.532(c). In addition to an IHO-ordered change in placement to an IAES for 45 days, at least one New York court has allowed the school district to obtain a *Honig* injunction in court. *See Roslyn Union Free Sch. Dist. v. Geffrey W.*, 36 IDELR 239 (N.Y. App. Div. 2002).
[49] 34 C.F.R. § 300.533.

applying for initial services under Part B, does not have a "current educational placement."[50]

2. From Another District. The IDEA requires that a receiving district provide "comparable" services to those described in a child's IEP from the previous public agency when a child transfers public agencies in the same State or from another State.[51] The IDEA, however, does not specify what the stay-put would be should a dispute arise. But the comments to the regulations indicate that the stay-put provision would not apply.[52] To the extent that implementation of the old IEP is impossible, the new district must provide services that approximate, as closely as possible, the old IEP.[53]

L. Private Settlements. The terms of the settlement agreement inform whether a particular private school is the student's current placement for purposes of the stay-put provision.[54]

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[50] *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46709 (August 14, 2006). *See also D.P. v. School Bd. of Broward County*, 483 F.3d 725, 47 IDELR 181 (11th Cir. 2007), *cert. denied*, 552 U.S. 1142, 109 LRP 34140 (2008); *Letter to Zahorchak*, 48 IDELR 135 (OSEP 2007); *Letter to Foreman*, 48 IDELR 285 (OSEP 2007).

[51] 34 C.F.R. § 300.323(e), (f).

[52] *Analysis and Comments to the Regulations*, Federal Register, Vol. 71, No. 156, Page 46682 (August 14, 2006).

[53] *Letter to Campbell*, 213 IDELR 265 (OSEP 1989).

[54] *See K.D. v. Dep't of Educ., State of Hawaii*, 665 F.3d 1110, 58 IDELR 2 (9th Cir. 2011) (the school district was found not liable for the child's continued placement in the private school because the district had simply agreed to "pay" for a child's private school for one year rather than "place" the child in the private school); *K.L. v. Berlin Borough Bd. of Educ.*, 61 IDELR 216 (D.N.J. 2013) (the parent was found not to be entitled to recover the ongoing costs of the private school placement because the agreement specifically stated that it did not address the parties' dispute over the student's stay-put placement in the event of a subsequent IEP challenge); *Cf. Bayonne v. R.S.*, 954 F. Supp. 933, 25 IDELR 700 (D.N.J. 1997) (the court determined that the school district was responsible for the child's continued placement in the private school because the agreement required the district to pay for the private school pending transition of the student to the district program, which had not yet been completed when the parent had filed the hearing complaint).

V. PRACTICE TIPS

A. Pre-Hearing Matters.

1. When raised, stay-put disputes should be decided expeditiously, including during the resolution period, if necessary.

2. Seek clarification of the status of the student's educational placement during the pre-hearing conference and address any disputes arising from disagreement between the parties regarding the child's educational placement prior to the hearing.

3. Consider a limited hearing on the record, recorded telephone conference, or some other evidence-gathering process (e.g., stipulations, affidavits, etc.) when a dispute exists and a record is needed to establish necessary findings of fact upon which to determine the student's then-current educational placement and whether a change in placement has occurred.

4. Specifically rule on what constitutes the entire stay-put placement.

B. Process to Decide Issue.

1. Establish that the stay-put provision applies.

2. Should the stay-put provision apply, determine the student's then-current educational placement.

3. Determine whether there has been a fundamental change in, or elimination of a basic element of the education program.

4. If there has been a fundamental change/elimination of a basic element of the education program, remedy the violation (e.g., ordering rescission of the change, restoring what was eliminated, compensatory education).

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