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HOW LONG DOES A STUDENT “STAY-PUT” WHILE THE PARENTS AND DISTRICT DISPUTE AN IEP?

The Individuals with Disabilities Education Act (IDEA) includes what is commonly referred to as a “stay-put” provision. Section 1415(j) of the IDEA states: “...during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child...until all such proceedings have been completed.”

This language requires that the student’s local educational agency (LEA) maintain the student’s educational placement and program in effect at the time that a due process complaint is filed until all proceedings have been completed. It serves as an automatic preliminary injunction to protect the status quo while the dispute is pending.

However, the “stay-put” placement can be changed in two different ways. It could be changed if the LEA and parents otherwise agree to change it, or it could be changed if the “State” and the parents otherwise agree. This latter way would include a hearing officer’s decision agreeing with the parents that they are entitled to tuition reimbursement for their unilateral private school placement of the student. Such a hearing officer’s decision validating the parents’ placement of the student shall make the student’s private school placement the “then-current placement” for purposes of the “stay-put” rule.

The application of the “stay-put” provision does not always end after the receipt of a hearing officer’s decision. Rather, there are various appeal options that can make such disputes last longer. As a result, the question arose regarding how long the IDEA’s “stay-put” provision was intended to last beyond the administrative proceedings. In 2014, in the case of *M.R. v. Ridley School District*, the Third Circuit Court of Appeals held that the IDEA’s “stay-put” provision shall remain in effect until any and all appeals are concluded and a final judgment has been rendered on the merits of the case.

In the *Ridley* case, the student had been unilaterally placed by the parents in a private school and, at the conclusion of the due process hearing, the hearing officer determined that the parents were entitled to tuition reimbursement. However, the dispute continued on with an appeal by the school district to the federal district court, resulting in favor of the district, and another appeal by the parents to the circuit court of appeals, again resulting in favor of the district, thereby resulting in a final decision that the district had offered FAPE and the tuition reimbursement claim was ultimately denied. Despite the merits of the case and the final decision in favor of the district, during the litigation of the appeals, the hearing officer’s decision constituted an agreement between the state and the parents to change the then-current placement to the private school, thus obligating the school district to fund the private school placement during the entire appeal process until a final judgment was rendered, regardless of the outcome of that final judgment on the merits. The *Ridley* court saw this “not as ‘an absurd result...but as an unavoidable consequence of the balance Congress struck to ensure stability for a vulnerable group of children.”

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.