

TRAVEL OF THE CASE

This matter is before the Commissioner on the petition of a special education student for an interim protective order. The student is alleging that his rights under the Individuals with Disabilities Education Act are not being observed. 20 USC 1415 A special education due process hearing is to be convened at the local level to decide placement issues relating to this student. 34 CFR 300.507 The purpose of the present interim order hearing is to establish the *status quo* placement of this student during the pendency of the due process proceedings. Jurisdiction is present under R.I.G.L.16-39-3.2

POSITION OF THE STUDENT

The student argues that his last Individualized Education Plan (IEP) called for an “out of district” placement to deal with his attention deficit and hyperactivity disorder. (ADHD) He alleges that the Lincoln school system is refusing to make the “out of district” placement required by his present IEP.

POSITION OF LINCOLN

Lincoln argues that the IEP it agreed to was only meant to be an “interim” IEP that could be changed at the unilateral discretion of Lincoln whenever a suitable “in-district” placement became available.

FINDINGS OF FACT

The student in this case is thirteen years old. His last agreed to IEP contained these provisions as set out in numbered blocks on his IEP:

- ITEM 21) **Provider Location Services:** *Teacher-Small group*
- ITEM 29) **DATE:** From: *1/24/00* TO: *TBD*
- ITEM 30) **LOCATION:** *Out of District*
- ITEM 37) **Explanation for Placement Outside of General Education Setting:** *[The Student’s] needs cannot be met within the Lincoln school district.*
- ITEM 47) **COMMENTS:** *When a school has been identified for [the student] transportation will be provided. Regular transportation if possible.*

Testimony in this matter established that the abbreviation “**TBD**” stands for “To Be Determined.” The IEP was agreed to and signed on January 1, 2000 by the parent of the student and by an authorized representative of the Lincoln schools.

CONCLUSIONS OF LAW

While an IEP is not a contract, it is document that has legal consequences. One purpose of an IEP is to establish what educational services a student with a disability is entitled to receive. A school district must:

“Provide special education and related services to a child with a disability in accordance with the child’s IEP...”¹

Another purpose of an IEP is to establish an agreed upon placement for each child that then becomes the “**status quo**” placement governing the student’s education until a new placement is agreed to or the due process procedures of the IDEA result in a new placement. *Burlington School Committee v. Department of Education*, 471 U.S 359 (1985) The IDEA, at 20 USC 1415(e)(3), states:

During the pendency of any proceedings conducted pursuant to this section, unless the State or local education agency and the parents...otherwise agree, the child shall remain in the then current educational placement of such child....

This statute is the well-known “Stay-put” provision. The purpose of the “Stay-put” provision is to keep special education students in their “current educational placement” unless a different placement is agreed to or the due process procedures of the IDEA result in a different placement.

We see no reason why an interim IEP should not establish a student’s “current placement” under the IDEA. See: 20 USC 1415 (e)(3) This is particularly true in situations where the “interim IEP” does not explicitly state that its signing does not change the **status quo**. Unless there are words in the “interim” IEP to the contrary we think that an “interim IEP” establishes the new **status quo** placement until the parties agree on a different placement or the hearing process establishes a different placement for the student. 20 USC 1415(e)(3)

This student’s IEP says that his “out of district” placement is to start on January 24, 2000 and that it is to extend to “TBD”—“To Be Determined.” The Individuals with Disabilities Education Act contemplates that placement decisions will be made by consensus or by the operation of due process procedures. When it comes to the placement rights of students with disabilities one of the main purposes of the IDEA was to prevent unilateral action by school districts. *Honig v. Doe*, 484 U.S. 305 (1988)

¹ 34 CFR 300.350 (IEP—accountability)

We therefore find that the student's IEP of January 24, 2000, which calls for an "out of district" placement, is now the *status quo* placement that the school district must provide until a new placement is agreed to or due process results in a different placement.

CONCLUSION

The school district is to provide this student with an "out of district " placement.

Forrest L. Avila, Hearing Officer

APPROVED:

Peter McWalters, Commissioner

DATE: April 6, 2000