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"STAY PUT" UNDER THE IDEA: AN UPDATED OVERVIEW [a1]

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The so–called "stay–put," or "pendency," provision of the Individuals with Disabilities Education Act (IDEA) [1] is not a mathematically precise or icily frozen concept. [2] Instead, it is a rather fluid and complicated concept [3] with "many faces." [4] Its primary purpose, which is to maintain the status quo, [5] is often merely circular, not resolving many of the wide variety of circumstances that Congress did not and could not anticipate. [6]

This document provides an annotated outline of a broad sampling of the many faces of stay–put. [7] The updated material added to the prior version [8] is underlined. Moreover, as the citations in **bold font** reflect, the emphasis is on one notably active jurisdiction—**California**—to illustrate the customization of this federal concept to the decisional framework for a specific state. [9] Thus, the application to other states would necessitate adjustment to focus on the ***9** legislation, regulations, and case law specific to the respective jurisdiction. Moreover, based on its format as a decisional framework, the primary perspective is that of adjudicators under the IDEA, starting with impartial hearing officers (IHOs), [10] even though it helps inform the parties and other interested individuals.

The first part of document provides the statutory and regulatory outer structure. The second part focuses on the pivotal term "then current educational placement." The third part demarcates the scope of stay–put. The fourth part examines its applications in various types of cases and situations. The fifth part serves as a catchall for miscellaneous other aspects of stay–put. The final part proposes a general synthesizing flowchart–like decisional framework.

I. *Framework of IDEA Statute and Regulations* [11]

A. *IDEA Legislation:* [12]

Except as provided in subsection [concerning expedited hearings in the disciplinary context], during the pendency of any proceedings conducted pursuant to this section [concerning impartial hearings and judicial appeals], unless the State or local education agency and the parents otherwise agree, the child shall remain in the then–current educational placement of the child, or, if preparing for initial admission to public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

B. *IDEA Regulation:* [13]

§ 300.518 Child's status during proceedings.

> (a) Except as provided in [the regulation specific to expedited hearings for disciplinary changes in placement], during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under § 300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
>
> (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
>
> (c) If the complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and 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 ***10** that the child had been receiving. 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. [14]
>
> (d) 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 paragraph (a) of this section.

C. *OSEP Guidance:*

When parents and public agencies are unable to agree on what constitutes the current educational placement, or on an alternative placement, this question must be resolved by an IDEA due process hearing officer or an appropriate court, on a case–by–case basis. [15]

Stay–put starts upon the filing for a hearing [16] and applies during the 30–day resolution period. [17]

II. *"Then–Current Placement" and Fundamental Change?* [18]

A1. *Then–Current Placement:* [19]

Revealing the potential complexities in some cases, courts have explained: "The IDEA does not define the term 'then–current educational placement,' but the 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.' " [20] A recent case characterized the concept as a continuum, which includes location and services. [21]

It is generally interpreted as the placement set forth in the child's last ***11** implemented individualized education program (IEP). [22] Thus, the time of the filing for the impartial hearing is controlling for eligibility [23] BUT NOT FOR The placement. [24]

A related variation is that the current educational placement "refers to the operative placement actually functioning at the time the dispute first [arose]," which would be the last agreed–upon IEP if the child had one or, if not (i.e., before any

IEP), whatever placement in which the child actually received instruction at the time the dispute arose. [25] This version does not include unilateral placements where the final tier has not ruled in favor of the parent. [26]

Identifying the alternative variations, the Second Circuit explained that "a court typically looks to (1) 'the placement described in the child's most recently implemented IEP'; (2) 'the operative placement actually functioning at the time when the stay put provision of the IDEA was invoked'; or (3) 'the placement at the time of the previously implemented IEP.' " [27]

A2. *Change:*

The intertwined issue is whether the action in question is a fundamental change, which is another fact–driven issue. More specifically, "the 'touchstone' is whether the modification 'is likely to affect in some significant way the child's learning experience.' " [28] For example, in the aforementioned [29] ***12** recent case, the court concluded that moving the child from a virtual school to a more traditional school constituted in these particular factual circumstances the requisite fundamental change in placement, thus triggering stay–put. For another recent example, the court concluded that the combination of 1) reducing the child's special education services from 32 to 27.5 hours (with addition of aide being in this case of no weight), 2) exposure to nondisabled peers during transitions rather than fully separate setting, and 3) eating lunch alone rather than with disabled peers, was a fundamental change. [30]

Because in this context the child's general educational placement is the setting rather than a particular school, [31] the following are not changes in the child's current placement: 1) moving all of the children to another similar school (in terms of the LRE continuum) upon shut down of the original school [32]; 2) a minor alteration, such as a change in transportation services [33] or a change in feeding treatment [34]; 3) transfer of an individual child between materially identical settings [35]; or 4) a district–wide shortening of the school day, or furlough. [36] However, upon a change in location the question is equivalence of services, not consideration of safety. [37]

B. *Special Circumstances:*

Some cases present special circumstances. [38] For example, the Ninth Circuit used a "as close as possible under the circumstances" test in accepting as the stay–put a temporary and malleable approximation of the last–agreed upon IEP, when implementation of the student's last agreed–upon IEP would have been impossible in the district. [39]

***13** A related special circumstance is where the last–agreed upon placement is not available. The courts are split. According to the D.C. Circuit, the stay–put provision poses an affirmative obligation for the district to arrange for a similar placement. [40] However, in a more recent and well–reasoned opinion, the Fourth Circuit disagreed with regard to § 1415(j), holding that the proper procedure would be for the parents to seek a preliminary injunction in court under § 1415(i)(2)(c)(iii), which is akin to *Honig* and which is not within the authority of an IDEA IHO. [41]

Another special circumstance in the gray area is where the state's enforcement of its private school policies interferes with the implementation of an individual student's IEP. [42]

A different special circumstance is when the parents disagree and neither has sole educational custody. An unpublished decision ruled that either parent's consent suffices to establish the requisite agreed–upon placement for purposes of stay–put. [43]

III. *Boundaries of Stay–Put*

Scope:

Inapplicable unless and until filing for a request for an impartial hearing, not for previous period. [44]

Inapplicable to equitable services for parentally placed private school children. [45]

Inapplicable to FBAs? [46]

Applies to related services. [47]

Applies to preschool IEPs of other public agencies. [48]

***14** Except in jurisdictions that stop it at the district court level, [49] stay–put expires when the litigation concludes. [50]

Effect:

Stay–put serves as an automatic preliminary injunction, thus not requiring the traditional factors (e.g., irreparable harm or likelihood of success) for such relief. [51] However, un–doing stay–put triggers the traditional factors, with the public policy weighing against such a reversal. [52]

Starts upon the filing for due process, not upon the date of the impasse. [53]

Once in effect, it applies to mediation, impartial hearings, initial judicial review, and—depending on the jurisdiction—subsequent judicial appeals. [54]

Graduation, at least until determined to be proper, does not terminate stay–put. [55] However, it ceases at the age ceiling of the student's entitlement. [56]

***15** IV. *Various Applications of Stay–Put*

Initial Admission Cases:

California's Education Code: "A pupil applying for initial admission to a public school, with the consent of his or her parent or guardian, shall be placed in the public school program until all proceedings have been completed." [57]

Eligibility Cases:

Stay–put is merely the general education program when the parent's challenge the district's determination, upon the initial evaluation, that the child is ineligible. [58]

Methodology Cases:

"If the parties dispute what the IEP requires, as they do here with respect to co–teaching, the court must evaluate the IEP as a whole and determine whether such a methodology is required under the terms of the IEP. Under usual circumstances,

the court should find it unnecessary to go beyond the four corners of the document in order to make that determination. However, vagueness in the instrument with respect to how its goals are to be achieved may require that the court turn to extrinsic evidence to determine the intent of those who formulated the plan.... Therefore, the district court ought to determine, after evaluating the entire May 2004 IEP as a totality, whether the parties regarded this methodology as an essential part of the IEP or as simply one of several ways for implementing it. As we noted earlier, in answering this question, the court will need to explore *precisely* how the plan was implemented at [the child's middle school and whether it is possible at the child's high school]." [59]

Tuition Reimbursement and Placement Cases:

In general, courts have concluded that the parties have implicitly agreed to a placement when the parents receive a state administrative agency decision in favor of their choice of placement. [60] Both the IDEA and ***16** California law codify this conclusion and extend it to placement cases generally. [61]

Exceptions: 1) where the IHO ordered reimbursement but did not conclude that the unilateral placement was appropriate [62]; 2) where, without such an IHO conclusion, the parties had not previously agreed on an IEP [63]; 3) where the original stay–put placement became moot and the school authorities acquiesced to a new placement [64]; and 4) where the student had graduated and gone to college [65]

Duration: continues for the unilateral placement even where IHO found that the district revised its proposal mid–year for an appropriate placement. [66]

Scope: comparable not necessarily an exact duplication, depending on equitable consideration. [67]

Settlement agreements: not necessarily establishing stay–put, depending on terms of the agreement. [68]

Payment: a matter of state law, including hearing officer determinations, rather than automatically part of stay–put in a tuition reimbursement case. [69]

***17** The equitable remedy, depending on the circumstances, may well be for the full value of the services, not just the out–of–pocket payments. [70]

Compensatory Education Cases:

Compensatory education is not an exception to the general rule that stay–put ceases upon reaching the statutory ceiling of age 21. [71] Moreover, although not clearly settled, some courts have ruled that compensatory education extends to the stay–put period. [72] Conversely, courts have applied stay–put to compensatory education when combined with tuition reimbursement. [73]

Stay–put does not render compensatory education moot upon move to another district. [74]

Divorced Parents with Joint Legal Custody:

As an extension of the tuition reimbursement cases, a federal district court recently ruled in an unpublished decision that a hearing officer's decision that changed the extent of inclusion of the child and that one parent agreed to (but the other did not) is the stay–put during the judicial appeal of the decision. [75]

Discipline Cases: [76]

For behavior substantially likely to result in danger to the student or others, the two exceptions to stay–put are 1) obtaining a *Honig* injunction in court, [77] and 2) obtaining an IHO–ordered change in placement to a 45–day interim alternative educational setting (IAES). [78]

The specialized variation is for disciplinary changes in placement, which require an expedited hearing, [79] including the three special–circumstances ***18** IAESs. In this disciplinary context, the stay–put is the removed setting until the completion of the hearing or the expiration of the removal, whichever occurs first. [80]

Some discipline cases provide special circumstances as to the application of stay–put. [81]

Inapplicable to 1) expulsion after agreed–upon exiting from special education; [82] 2) expulsion for conduct properly determined not to be a manifestation of the child's disability; [83] or 3) calling the police resulting in arrest. [84]

Extracurricular Activities:

"If the activity 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. However, if the activity is not included in the child's IEP, it is not part of the student's present educational placement and the student has no right under Part B to continue to participate in the extracurricular activity. However, if the parties cannot agree on the child's current educational placement, as reflected in his/her IEP, the determination of what constitutes the present educational placement for purposes of the pendency provision should be made by a Part B [IHO] or by an appropriate court." [85]

Transfer from Part C (i.e., from an Individual Family Service Plan):

Stay–put does not apply. [86]

***19** *Transfer from Another District within the Same State:* [87]

Stay–put means comparable IEP services, not same brick–and–mortar location, with a particular IDEA provision specifically applicable to in–state transfers. [88] However, absent a compelling reason, the private school is the stay–put when the child moves from a feeder elementary to a high school district (within the same state), with the fiscal responsibility between these entities remaining a matter of state law. [89] Similarly, the parent's rejection of the proffered services invokes stay–put for the program (here, home–based ABA) in effect before the family moved. [90]

The interim placement in this context becomes the stay–put. [91]

After Initial Refusal:

Where a parent arranged for private provision of stay–put services upon a district's refusal and the district then assumes this obligation, the district may use its own services rather than continue the private services. [92]

As the Result of a Private Settlement:

Stay–put depends on the specific terms of the settlement agreement. [93]

However, stay–put does not expand or otherwise alter the pertinent terms of the settlement agreement. [94]

***20** *As a Result of an IHO Order for Related Services:*

A federal district court in West Virginia applied the general approach of IHO orders to the specific order for a third–party service that, upon the district's failure to implement, the parents arranged for on their own. [95]

As a Result of a Temporary IHO Order:

A federal district court in New York recently ruled that a district's addition of a service in response to an interim IHO order constituted the stay–put "until a final, non–appealable order." [96]

Where an IHO issued a final order for a limited period, the courts have split depending on whether the order was specific as to the consequence at the end of the period. [97]

As a Result of IEP Implementation Different from Its Terms:

Where the practice in implementing the last–agreed upon IEP differed from its terms, a federal district court in California ruled in a recent unpublished decision that the change was a mutual modification in the stay–put where it came closer to the overall goal of the IEP. [98]

Charter Schools:

Disenrollment by the charter school during due process proceedings is a change in placement and, thus, a violation of stay–put. [99]

V. *Miscellaneous Other*

Stay–put does not apply to the same class or, except if promotion/retention is at issue, grade level. [100]

Stay–put does not require parental consent for a change in the IEP where the parents had the requisite opportunity for participation in the IEP process. [101]

Obtaining a judicial order for stay–put after filing for an impartial hearing does not require exhaustion of the stay–put issue. [102]

***21** Whether the district has an obligation to conduct the annual review of the child's IEP during stay–put is not an entirely settled question. [103]

Compensatory education is, depending on the specific circumstances, among the available remedies for violation of stay–put. [104]

Equitable defenses do not apply in determining the stay–put. [105]

In a tuition reimbursement case, if the district ultimately prevails on the merits, thus nullifying the stay–put, it is likely that the parent is not obligated to pay back the district. [106]

A stay–put order, at least in tuition reimbursement cases, qualifies as a collateral order for purposes of interlocutory appeal. [107]

The material–failure test applies to implementation and, thus, enforcement of stay–put orders. [108]

If stay–put was the only relief parents obtained, they are not prevailing in terms of attorneys' fees. [109]

*22 VI. *Overall Decisional Framework*

1. *As a threshold matter, is stay–put within the jurisdiction of the adjudicator?* [110]

- e.g., not for pre–filing period
- e.g., not after age of entitlement
- e.g., not for parentally placed private school child
- e.g., not for eligibility case (upon initial evaluation)
- e.g., not for transfer from Part C

2. *If so, what was the child's then–current placement, and has the district changed it?*

- e.g., What was the operative placement actually functioning at the time the dispute first arose (i.e., the last agreed–upon IEP if the child had one or whatever placement in which the child actually received instruction at the time the dispute arose)?
- e.g., Was the district's action likely to affect in some significant way the child's learning experience?

3a. *If so, but the stay–put is not available, what is the extent of the district's obligation and, thus, the adjudicator's jurisdictional/remedial authority?*

- e.g., Is the district obligated to provide a close as possible alternative or, instead, is the matter within the court's exclusive jurisdiction and broad remedial authority?

3b. *If so and the stay–put is available, what is the extent of the adjudicator remedial authority?*

- e.g., May the adjudicator order compensatory education?

Footnotes

a1 The views expressed are those of the authors and do not necessarily reflect the views of the publisher. Cite as 330 Ed.Law Rep. [8] (June 30, 2016).

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1 20 U.S.C. §§ 1400 *et seq*. (2011). Part C of the IDEA applies to children aged 0 to 3, and Part B applies to children aged 3 to 21.

2 *See, e.g.*, *Honig v. Doe*, 484 U.S. 305, 324, 108 S.Ct. 592, 98 L.Ed.2d 686, 43 Ed.Law Rep. 857 (1988): "Recognizing that [the Act's adjudicative] proceedings might prove long and tedious, the Act's drafters did not intend [the stay–put provision] to operate inflexibly.... " The Supreme Court also used the stay–put provision directly in *Burlington School Committee v. Department of Education*, 471 U.S. 359, 372–73, 105 S.Ct. 1996, 85 L.Ed.2d 385, 23 Ed.Law Rep. 1189 (1985) and less directly in *Schaffer v. Weast*, 546 U.S. 49, 59–60 & 65 n.1, 126 S.Ct. 528, 163 L.Ed.2d 387, 203 Ed.Law Rep. 29 (2005).

3 Similarly, its corollary concept of educational placement is "an inexact science." *See, e.g.*, *John M. v. Bd. of Educ.*, 502 F.3d 708, 714, 225 Ed.Law Rep. 125 (7th Cir. 2007).

4 A respected commentator provided this characterization more than two decades ago. Gail Sorenson, *The Many Faces of the EHA's "Stay–Put" Provision*, 62 Ed. Law Rep. 833 (1990). Since then, as the case law cited herein shows, these many further faces have appeared.

5 *See, e.g.*, *J.O. v. Orange Twp. Bd. of Educ.*, 287 F.3d 267, 272, 164 Ed.Law Rep. 44 (3d Cir. 2002).

6 *See, e.g.*, *L.Y. v. Bayonne Bd. of Educ.*, 384 Fed.Appx. 58, 261 Ed.Law Rep. 114 (3d Cir. 2010) (intersection of IDEA and state law for charter schools).

7 The scope is comprehensive in terms of primary sources of law, except that the case law component is limited to court decisions, thus not extending to hearing or review officer decisions.

8 Perry A. Zirkel, *Stay–Put under the IDEA: An Annotated Overview*, 286 Ed. Law Rep. 12 (2013).

9 For a similar illustrative customized decisional template, see Perry A. Zirkel, *Tuition Reimbursement under the IDEA: A Decisional Checklist*, 282 Ed. Law Rep. 785 (2012).

10 The term "adjudicator" refers here initially to the hearing but ultimately to review officers and courts under the IDEA's adjudicative avenue for dispute resolution. For an overview of the alternate avenues under the IDEA and Section 504, see Perry A. Zirkel & Brooke L. McGuire, *A Roadmap to Legal Dispute Resolution for Parents of Students with Disabilities*, 23 J. SPECIAL EDUC. LEADERSHIP 100 (2010).

11 This part also provides the overall guidance of the Office of Special Education Programs (OSEP). The subsequent parts provide respectively more specific OSEP guidance.

12 20 U.S.C. § 1415(j) (2011); *see also* **CAL. EDUC. CODE § 56505(d) (2011)**. For the special rules in the disciplinary (i.e., removal) context, see 20 U.S.C. § 1415(k)(4).

13 34 C.F.R. § 300.518 (2011).

14 *See also* Commentary to the IDEA regulations, 71 Fed. Reg. 46,709 (Aug. 14, 2006) ("We believe that a child who previously received services under Part C of the Act, but has turned three and is no longer eligible under Part C of the Act, and is applying for initial services under Part B of the Act, does not have a 'current educational placement'").

15 71 Fed. Reg. 46,704 (Aug. 14, 2006); *see also Letter to Chassey*, 30 IDELR ¶ 51 (OSEP 1997); *Letter to Heldman*, 20 IDELR 621 (OSEP 1993); *Letter to Stohrer*, 17 IDELR 55 (OSEP 1990).

16 *Letter to Winston*, 213 IDELR 102 (OSEP 1987).

17 71 Fed. Reg. 46,709 (Aug. 14, 2006).

18 For a recent iteration of this basic two–part test, see *G.B. v. Dist. of Columbia*, 78 F.Supp.3d 109, 319 Ed.Law Rep. 882 (D.D.C. 2015); *Johnson v. Dist. of Columbia*, 839 F.Supp.2d 173, 281 Ed.Law Rep. 469 (D.D.C. 2012). The two parts are overlapping and interactive rather than mutually exclusive; for example, in various cases, determining the then current placement answers whether the district has fundamentally changed it.

19 The meaning of educational placement more generally does not necessarily square with the meaning in the context of stay–put. See, e.g., *Brad K. v. Bd. of Educ. of City of Chicago*, 787 F.Supp.2d 734, 740 n.1, 272 Ed.Law Rep. 376 (N.D. Ill. 2009).

20 *Id.* at 176–77 (quoting *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 115 Ed.Law Rep. 287 (7th Cir. 1996)).

21 *Eley v. Dist. of Columbia*, 47 F.Supp.3d 1, 314 Ed.Law Rep. 767 (D.D.C. 2014).

22 *See, e.g.*, ***Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 164 Ed.Law Rep. 52 (9th Cir. 2002)**; *Erickson v. Albuquerque Pub. Sch.*, 199 F.3d 1116, 140 Ed.Law Rep. 894 (10th Cir. 1999). For a recent example, see *G.W. v. Boulder Valley Sch. Dist.*, 67 IDELR ¶ 112 (D. Colo. 2016) (upholding last–implemented IEP in out–of–state placement, even though parents refused it and insisted on comparable in–state placement).

23 *See, e.g.*, ***A.D. v. State of Haw. Dep't of Educ.*, 727 F.3d 911, 296 Ed.Law Rep. 816 (9th Cir. 2013)**.

24 *See, e.g., R.B. v. Mastery Sch.*, 532 Fed.Appx. 136, 299 Ed.Law Rep. 24 (3d Cir. 2013).

25 *See, e.g., Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 107 Ed.Law Rep. 530 (3d Cir 1996); *Thomas v. Cincinnati Bd. of Educ.*, 918 F.2d 618, 64 Ed.Law Rep. 43 (6th Cir. 1990). For recent repetitions of this intertwined standard, citing these well–accepted court decisions, see, e.g., *J.E. v. Boyertown Area Sch. Dist.*, 452 Fed.Appx. 172, 2011 WL 5838479, 277 Ed.Law Rep. 146 (3d Cir. 2011): *L.Y. v. Bayonne Bd. of Educ.*, 384 Fed.Appx. 58, 261 Ed.Law Rep. 114 (3d Cir. 2010).

26 *N.W. v. Boone Cnty. Bd. of Educ.*, 763 F.3d 611, 308 Ed.Law Rep. 616 (6th Cir. 2014) (limiting *Thomas* in light of more recent IDEA regulation defining "placement").

27 *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015) (citing *Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 386 F.3d 158, 192 Ed.Law Rep. 642 (2d Cir. 2004)).

28 *J.R. v. Mars Area Sch. Dist.*, 318 Fed.Appx. 113, 119, 244 Ed.Law Rep. 1074 (3d Cir. 2009) (citing *DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 153, 21 Ed.Law Rep. 24 (3d Cir. 1984, and upholding provision of same services though changed from resource room to inclusion setting)); *see also Robert M. v. State of Haw.*, 51 IDELR ¶ 211 (D. Haw. 2008) (ruling that mental health services constituted a necessary component of the student's last IEP); *cf. Letter to Fisher*, 21 IDELR 992 (OSEP 1994) ("whether the proposed change would substantially or materially alter the child's educational program"—specifying four factors). For a recent example, see ***Anchorage Sch. Dist. v. M.P.*, 689 F.3d 1047, 283 Ed.Law Rep. 653 (9th Cir. 2012)** (holding that updating the IEP does not qualify as a change to a student's educational placement "so long as such revisions do not involve changes to the academic setting in which instruction is provided or constitute significant changes in the student's educational program").

29 *See supra* note 19 and accompanying text.

30 *See, e.g.*, *G.B. v. Dist. of Columbia*, 78 F.Supp.3d 109, 319 Ed.Law Rep. 882 (D.D.C. 2015) (citing LRE dicta in *Lunceford v. Dist. of Columbia Bd. of Educ.*, 745 F.2d 1577, 20 Ed.Law Rep. 1075 (D.D.C. 1984)).

31 *See, e.g.*, *White v. Ascension Sch. Parish Sch. Bd.*, 343 F.3d 373, 180 Ed.Law Rep. 491 (5th Cir. 2003); *Johnson v. Dist. of Columbia*, 839 F.Supp.2d 173, 281 Ed.Law Rep. 469 (D.D.C. 2012).

32 *See, e.g.*, *Concerned Parents v. N.Y.C. Bd. of Educ.*, 629 F.2d 751 (2d Cir. 1980) ("remain[ed] in the same classification, the same school district, and the same type of educational program special classes").

33 *DeLeon v. Susquehanna Cmty. Sch. Dist.*, 747 F.2d 149, 21 Ed.Law Rep. 24 (3d Cir. 1984). *But cf. Douglas v. Dist. of Columbia*, 4 F.Supp. 3d 1, 308 Ed.Law Rep. 343 (D.D.C. 2014) (change from neighborhood school to vaguely described alternative placement with needed addition of transportation).

34 *Lunceford v. Dist. of Columbia Bd. of Educ.*, 745 F.2d 1577, 20 Ed.Law Rep. 1075 (D.D.C. 1984).

35 *AW v. Fairfax County Sch. Bd.*, 372 F.3d 674, 189 Ed.Law Rep. 14 (4th Cir. 2004); *Bd. of Educ. of Cmty. High Sch. Dist. No. 218 v. Ill. State Bd. of Educ.*, 103 F.3d 545, 548, 115 Ed.Law Rep. 287 (7th Cir. 1996); *D.K. v. Dist. of Columbia*, 983 F.Supp.2d 138, 305 Ed.Law Rep. 97 (D.D.C. 2014); *Ward v. Dist. of Columbia*, 950 F.Supp.2d 9 (D.D.C. 2013); *James v. Dist. of Columbia*, 949 F.Supp.2d 134, 299 Ed.Law Rep. 873 (D.D.C. 2013); *cf. Bd. of Educ. v. Ill. State Bd. of Educ.*, 35 IDELR ¶ 213 (N.D. Ill. 2001) (granting parent's challenged request to move the child from an out–of–state to a less costly in–state residential placement as the stay–put).

36 ***N.D. v. State of Haw. Dep't of Educ.*, 600 F.3d 1104, 255 Ed.Law Rep. 537 (9th Cir. 2010), *vacated as moot*, 469 Fed.Appx. 570, 281 Ed.Law Rep. 40 (9th Cir. 2012).** Instead, the court characterized this issue as a failure–to–implement claim.

37 *George A. v. Wallingford–Swarthmore Area Sch. Dist.*, 655 F.Supp.2d 546, 251 Ed.Law Rep. 625 (E.D. Pa. 2009).

38 For an additional example, see *supra* note 6.

39 ***Ms. S. v. Vashon Island Sch. Dist.*, 337 F.3d 1115, 1134, 179 Ed.Law Rep. 147 (9th Cir. 2003)**; *accord John M. v. Bd. of Educ.*, 502 F.3d 708, 225 Ed.Law Rep. 125 (7th Cir. 2007). Yet, stay–put is not a clearly temporary placement superseded by an agreed–upon permanent placement. *See, e.g.*, ***W.A. v. Paterson Joint Unified Sch. Dist.*, 57 IDELR ¶ 38 (E.D. Cal. 2011).**

40 *Knight v. Dist. of Columbia*, 877 F.2d 1025, 54 Ed.Law Rep. 791 (D.C. Cir. 1989). For subsequent applications, see, e.g., Laster v. Dist. of Columbia, 394 F.Supp.2d 60, 204 Ed.Law Rep. 161 (D.D.C. 2005); Spilsbury v. Dist. of Columbia, 307 F.Supp.2d 22, 186 Ed.Law Rep. 741 (D.D.C. 2004).

41 *Wagner v. Bd. of Educ. of Montgomery Cnty.*, 335 F.3d 297, 178 Ed.Law Rep. 694 (4th Cir. 2004).

42 *D.M. v. N.J. Dep't of Educ.*, 801 F.3d 205, 322 Ed.Law Rep. 127 (3d Cir. 2015).

43 *Sheils v. Pennsbury Sch. Dist.*, 64 IDELR ¶ 294 (E.D. Pa. 2015).

44 *See, e.g.*, ***K.D. v. Dep't of Educ., State of Haw.*, 665 F.3d 1110, 275 Ed.Law Rep. 585 (9th Cir. 2011).** More recently, the Second Circuit clarified that the trigger is the filing for the hearing, not when and if the parties reached an impasse. *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015).

45 *Bd. of Educ. of Appoquinimink Sch. Dist. v. Johnson*, 51 IDELR ¶ 182 (D. Del. 2008).

46 For the limited case law on point, an unpublished court decision ruled that stay put does not apply to an FBA in the context of a hearing officer order that one of the parents agreed with. *Sheils v. Pennsbury Sch. Dist.*, 64 IDELR ¶ 294 (E.D. Pa. 2015).

47 *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015).

48 *Jalen Z. v. Sch. Dist. of Philadelphia*, 104 F.Supp.3d 660, 324 Ed.Law Rep. 766 (E.D. Pa. 2015).

49 See, e.g., *Kari H. v. Franklin Special Sch. Dist.*, 125 F.3d 855 (6th Cir. 1997); *Andersen v. Dist. of Columbia*, 877 F.2d 1018, 54 Ed.Law Rep. 784 (D.C. Cir 1989).

50 *See, e.g.*, *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 302 Ed.Law Rep. 522 (3d Cir. 2014), *cert. denied*, 135 S.Ct. 2309 (2015); ***Marcus I. v. Dep't of Educ., State of Haw.*, 434 Fed.Appx. 600, 272 Ed.Law Rep. 887 (9th Cir. 2011), *further proceedings*, 506 Fed.Appx. 613, 292 Ed.Law Rep. 613 (9th Cir. 2013) (citing *Joshua A.*).**

51 *See, e.g.*, ***Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 242 Ed.Law Rep. 654 (9th Cir. 2009)**; *Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 400 F.3d 508, 196 Ed.Law Rep. 38 (7th Cir. 2005); *Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 107 Ed.Law Rep. 530 (3d Cir. 1996); *Zvi v. Ambach*, 694 F.2d 904, 8 Ed.Law Rep. 10 (2d Cir. 1982); *Abington Heights Sch. Dist. v. A.C.*, 63 IDELR ¶ 97 (E.D. Pa. 2014); *cf. Letter to Goldstein*, 60 IDELR ¶ 200 (OSEP 2013) (opining that if placement

is not at issue the district should immediately implement the stay–put, but if the placement is at issue it is appropriate to wait for the IHO's determination). One limited exception is for child find in the disciplinary context (i.e., the district did not previously identify the child as eligible under the IDEA. See, e.g., *Rodiriecus L. v. Waukegan Sch. Dist.*, 90 F.3d 249, 111 Ed.Law Rep. 94 (7th Cir. 1996)). A second is for preliminary injunction motion that affects a stay put invocation, but is not itself the invocation. See, e.g., ***N.D. v. State of Haw., Dep't of Educ.*, 600 F.3d 1104, 255 Ed.Law Rep. 537 (9th Cir. 2010)**; ***Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 164 Ed.Law Rep. 52 (9th Cir. 2002)**; *Aliah K. v. State of Haw., Dep't of Educ.*, 788 F.Supp.2d 1176, 272 Ed.Law Rep. 495 (D. Haw. 2011).

52 *See, e.g., S.T. v. Howard Cnty. Pub. Sch. Sys.*, 64 IDELR ¶ 63 (D. Md. 2014); *see also Seashore Charter Sch. v. E.B.*, 64 IDELR ¶ 44 (S.D. Tex. 2014) (danger); *D.M. v. N.J. Dep't of Educ.*, 64 IDELR ¶ 20 (D.N.J. 2014) (mainstreaming).

53 *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015).

54 *Compare M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 302 Ed.Law Rep. 522 (3d Cir. 2014), *cert. denied*, 135 S.Ct. 2309 (2015); ***Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 242 Ed.Law Rep. 654 (9th Cir. 2009)**; *Kari H. v. Franklin Special Sch. Dist.*, 26 IDELR ¶ 569 (6th Cir. 1997) (ruling that stay–put continues during judicial appeals), with *Kari H. v. Franklin Special Sch. Dist.*, 26 IDELR 569 (6th Cir. 1997); *Andersen v. Dist. of Columbia*, 877 F.2d 1018, 54 Ed.Law Rep. 784 (D.C. Cir. 1980) (ruling that stay–put ends with the trial court's final decision).

55 *See, e.g.*, *Kevin T. v. Elmhurst Cmty. Sch. Dist.*, 34 IDELR ¶ 242 (N.D. Ill. 2001); *Cronin v. Bd. of Educ.*, 689 F.Supp. 197, 48 Ed.Law Rep. 461 (S.D.N.Y. 1988). *But cf. G.M. v. Dry Creek Joint Elementary Sch. Dist.*, 458 Fed.Appx. 654, 278 Ed.Law Rep. 851 (9th Cir. 2011).

56 *See, e.g., Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Ill. State Bd. of Educ.*, 79 F.3d 654, 108 Ed.Law Rep. 32 (7th Cir. 1996); *J.R. v. Cox–Cruey*, 61 IDELR ¶ 212 (E.D. Ky. 2013); *K.K. v. Dep't of Educ.*, 57 IDELR ¶ 100 (D. Haw. 2011); *B.T. v. Dep't of Educ., State of Haw.*, 57 IDELR ¶ 134 (D. Haw. 2011). *But cf.* ***A.D. v. State of Haw. Dep't of Educ.*, 727 F.3d 911, 296 Ed.Law Rep. 816 (9th Cir. 2013)** (not where challenging the lawfulness of a state law).

57 **CAL. EDUC. CODE § 56505(d)**.

58 *See, e.g.*, *Mangum v. Renton Sch. Dist.*, 56 IDELR ¶ 46 (W.D. Wash. 2011).

59 *John M. v. Bd. of Educ.*, 502 F.3d 708, 716, 225 Ed.Law Rep. 125 (7th Cir. 2007).

60 *See, e.g.,* ***Joshua A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 242 Ed.Law Rep. 654 (9th Cir. 2009)**; ***Clovis Unified Sch. Dist. v. Cal. Special Educ. Hearing Office*, 903 F.2d 635, 60 Ed.Law Rep. 728 (9th Cir. 1990)**; ***Ravenswood City Sch. Dist. v. J.S.*, 55 IDELR ¶ 222 (N.D. Cal. 2010).** This conclusion applies elsewhere as the clearly prevailing view. *See, e.g.*, *Bd. of Educ. v. Schutz*, 290 F.3d 476, 165 Ed.Law Rep. 76 (2d Cir. 2002); *St. Tammany Parish Sch. Bd. v. State of La.*, 142 F.3d 776, 126 Ed.Law Rep. 76 (5th Cir. 1998); *Susquenita v. Raelee S.*, 96 F.3d 78, 112 Ed.Law Rep. 590 (3d Cir. 1996). *But see DeKalb Cnty. Sch. Dist. v. J.W.M.*, 445 F.Supp.2d 1371, 212 Ed.Law Rep. 761 (N.D. Gal. 2006) (ruling that tuition reimbursement and compensatory education awards are not changes in placement). This conclusion applies even in the absence of a prior IEP. See, e.g., *Dist. of Columbia v. Oliver*, 991 F.Supp.2d 209, 306 Ed.Law Rep. 274 (D.D.C. 2013) (eligibility); *Dist. of Columbia v. Vinyard*, 901 F.Supp.2d 77, 291 Ed.Law Rep. 615 (D.D.C. 2012) (no IEP). Moreover, it applies to a reimbursement order just as long as the IHO has included a finding that the unilateral placement was appropriate. *Dist. of Columbia v. Wimbish*, 66 IDELR ¶ 281 (D.D.C. 2015). However, at least in the Ninth Circuit, this effect does not apply in the absence of an adjudicative decision agreeing that the private placement is appropriate. *See, e.g.*, ***K.D. v. Dep't of Educ., State of Haw.*, 665 F.3d 1110, 275 Ed.Law Rep. 585 (9th Cir. 2011)**; *Thomas W. v. State of Haw. Dep't of Educ.*, 60 IDELR ¶ 104 (D. Haw. 2012) (remanding to hearing officer to clarify the intention). Similarly, it does not generally apply to pre–decision expenses. The Second Circuit regarded an unreasonably delayed hearing as an exception. *Mackey v. Bd. of Educ. for Arlington Cent. Sch. Dist.*, 386 F.3d 158, 192 Ed.Law Rep. 642 (2d Cir. 2004). However, finding the particular impartial hearing not to fit this factual circumstance, the Ninth Circuit avoided determining the merits of the Second Circuit's view. ***Ashland Sch. Dist. v. Parents of Student E.H.*, 587 F.3d 1175, 251 Ed.Law Rep. 36 (9th Cir. 2009).** Another exception is when the final administrative determination is that the unilateral placement is no longer appropriate after a specified period of time, which would be the limit of the stay–put period. *A.W. v. Bd. of Educ. of Wallkill Cent. Sch. Dist.*, 65 IDELR ¶ 211, *adopted*, 65 IDELR ¶ 237 (N.D.N.Y. 2015).

61 34 C.F.R. § 300.518(d); **CAL. EDUC. CODE § 56505(d)**; see also Letter to Hampden, 49 IDELR ¶ 197 (OSEP 2007).

62 *See, e.g.*, ***L.M. v. Capistrano Unified Sch. Dist.*, 556 F.3d 900, 242 Ed.Law Rep. 23 (9th Cir. 2009)**; ***J.G. v. Dep't of Educ. State of Haw.*, 64 IDELR ¶ 7 (D. Haw. 2014)**; ***Huerta v. San Francisco Unified Sch. Dist.*, 57 IDELR ¶ _282 (N.D. Cal. 2011).** *But cf.* ***J.H. v. Los Angeles Unified Sch. Dist.*, 54 IDELR ¶ 195 (C.D. Cal. 2010)** (IHO's conclusion that district's IEP was not appropriate plus services not in dispute).

63 ***S.L. v. Shoreline Unified Sch. Dist.*, 55 IDELR ¶ 165 (N.D. Cal. 2010).**

64 ***Marcus I. v. Dep't of Educ., State of Haw.*, 506 Fed.Appx. 613, 292 Ed.Law Rep. 613 (9th Cir. 2013).**

65 *Weakley Cnty. Bd. of Educ. v. H.M.*, 53 IDELR ¶ 114 (W.D. Tenn. 2009).

66 *Sch. Dist. of Philadelphia v. N.K.*, 66 IDELR ¶ 247 (E.D. Pa. 2015).

67 *See, e.g.*, *Dep't of Educ., State of Haw. v. M.F.*, 840 F.Supp.2d 1214, 281 Ed.Law Rep. 886 (D. Haw. 2011); *cf.* ***Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 164 Ed.Law Rep. 52 (9th Cir. 2002)** (transfer from Part C prior to new pertinent IDEA provision).

68 *See infra* notes 93–94 and accompanying text.

69 *Letter to Philpot*, 60 IDELR ¶ 140 (OSEP 2012); *see also Dep't of Educ., State of Haw. v. M.F.*, 62 IDELR ¶ 169 (D. Haw. 2013) (not for related services that IHO determined to be not appropriate and intertwined). *But see Dist. of Columbia v. Vinyard*, 901 F.Supp.2d 77, 291 Ed.Law Rep. 615 (D.D.C. 2012) (automatic payment).

70 *Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015).

71 *Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Ill. State Bd. of Educ.*, 79 F.3d 654, 108 Ed.Law Rep. 32 (7th Cir. 1996); *J.R. v. Cox–Cruey*, 61 IDELR ¶ 212 (E.D. Ky. 2013).

72 *See, e.g.*, *Mr. R. v. Me. Sch. Admin. Dist. No. 35*, 295 F.Supp.2d 113, 184 Ed.Law Rep. 273 (D. Me. 2003). For the related but separate issue, courts have ruled that violations of stay–put may be the basis for compensatory education. See, e.g., *John M. v. Evanston Twp. High Sch. Dist. No. 202*, 52 IDELR ¶ 73 (N.D. Ill 2009).

73 *Brennan v. Reg'l Sch. Dist. No. 1*, 531 F.Supp.2d 245, 229 Ed.Law Rep. 513 (D. Conn. 2008); *Dep't of Educ. v. Ria L.*, 60 IDELR ¶ 9 (D. Haw.).

74 *See, e.g.*, *L.R.L. v. Dist. of Columbia*, 896 F.Supp.2d 69, 290 Ed.Law Rep. 818 (D.D.C. 2012).

75 *Sheils v. Pennsbury Sch. Dist.*, 64 IDELR ¶ 294 (E.D. Pa. 2015).

76 20 U.S.C. § 1415(k); 34 C.F.R. §§ 300.530—300.536. For an overview, see, e.g., Perry A. Zirkel, *"Stay–Put" under the IDEA Discipline Provisions*, 214 Ed.Law Rep. 467 (2007). Stay–put applies to issues at the margin of discipline, such as disenrollment for absenteeism. See, e.g., *R.B. v. Mastery Charter Sch.*, 762 F.Supp.2d 745, 267 Ed.Law Rep. 158 (E.D. Pa. 2010).

77 *Honig v. Doe*, 484 U.S. 305, 43 Ed.Law Rep. 857 (1988). The outcomes have varied in such cases. *Compare*, e.g., *Sch. Dist. of Philadelphia v. Stephan M.*, 25 IDELR 506 (E.D. Pa. 1997), *with Roslyn Union Free Sch. Dist. v. Geffrey W.*, 36 IDELR ¶ 239 (N.Y. App. Div. 2002). Moreover, not all of the courts have agreed that a *Honig* injunction remains an open alternative. See, e.g., *Gilbert Unified Sch. Dist. No. 41 v. K.M.*, 39 IDELR ¶ 187 D. Ariz. 2003).

78 20 U.S.C. § 1415(k)(3)(B)(ii)(II); 34 C.F.R. § 300.532(b)(2)(ii).

79 20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c). In the various such cases, the regulations provide that this expedited process may be repeated "if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others." *Id.* § 300.532(b)(3).

80 20 U.S.C. § 1415(k)(4)(A); 34 C.F.R. § 300.533; *see also* 20 U.S.C. § 1415(k)(5)(D)(ii); 34 C.F.R. § 300.534(d)(2)(ii) (during expedited evaluation when not protected under deemed–to–know provision). *But cf. S.W. v. Holbrook Pub. Sch.*, 221 F.Supp.2d 222, 170 Ed.Law Rep. 565 (D. Mass. 2002) (ruling that the stay–put is the original school setting when the parent asserts the issue of eligibility).

81 *See, e.g.*, *M.M. v. Special Sch. Dist. No. 1*, 512 F.3d 455, 228 Ed.Law Rep. 684 (8th Cir. 2008) (parties agreed that current placement was inappropriate but parent contributed to lack of lack of FAPE in the interim); *cf*. *In re P.E.C.*, 211 S.W.3d 368 (Tex. Ct. App. 2006) (IDEA "stay–put does not apply to juvenile court dispositions").

82 *Plumbly v. Ne. Indep. Sch. Dist*., 46 IDELR ¶ 126 (W.D. Tex. 2006).

83 *Doe v. Bd. of Educ*., 115 F.3d 1273, 118 Ed.Law Rep. 881 (7th Cir. 1997); *Ocean Twp. Bd. of Educ. v. E.R.*, 63 IDELR ¶ 16 (D.N.J. 2014).

84 20 U.S.C. § 1415(k)(6); 34 C.F.R. § 300.535. See, e.g., *Valentino C. v. Sch. Dist. of Philadelphia*, 40 IDELR ¶ 208 (E.D. Pa. 2004).

85 *Letter to Heldman*, 20 IDELR 621 (OSEP 1993).

86 *See supra* note 14 and accompanying text; *see also D.P. v. Sch. Bd. of Broward Cnty*., 483 F.3d 725, 218 Ed.Law Rep. 826 (11th Cir. 2007); *M.M. v. N.Y.C. Dep't of Educ.*, 583 F.Supp.2d 498, 239 Ed.Law Rep. 414 (S.D.N.Y. 2008) (mentioning but not relying on the regulation). The conflicting case law arose before this 2006 IDEA regulation (and its subsequent repetition in California's education code). *Compare* ***Johnson v. Special Educ. Hearing Office*, 287 F.3d 1176, 164 Ed.Law Rep. 52 (9th Cir. 2002)**, *with Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181, 201 Ed.Law Rep. 44 (3d Cir. 2005). However, OSEP cautioned districts in the Third Circuit to consult with legal counsel. *Letter to Zahorchak*, 48 IDELR ¶ 135 (OSEP 2007). However, a recent case in Pennsylvania did not follow this line of authority, perhaps because the transition from early intervention was at a much later point that age 3. *Jalen Z. v. Sch. Dist. of Philadelphia*, 104 F.Supp.3d 660, 324 Ed.Law Rep. 766 (E.D. Pa. 2015).

87 In partial contrast, for the parallel IDEA regulation specific to inter–state transfers, see 34 C.F.R. § 300.323(f).

88 20 U.S.C. § 1414(d)(2)(C)(i)(L); 34 C.F.R. § 300.323(e); *see salo* 71 Fed. Reg. 46,681 (Aug. 14, 2006) (" 'comparable' services means services that are 'similar' or 'equivalent'' to those that were described in the child's IEP from the previous public agency, as determined by the child's newly designated IEP Team in the new public agency"). *See, e.g.*, *J.F. v. Byram Twp. Bd. of Educ.*, 629 Fed.Appx. 235, 327 Ed.Law Rep. 603 (3d Cir. 2015); *G.B. v. N.Y.C. Dep't of Educ*., 58 IDELR ¶ 100 (S.D.N.Y. 2012). For potential California stay–put variations specific to intra–state moves, see **CAL. EDUC. CODE § 56325**.

89 *Casey K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 400 F.3d 508, 196 Ed.Law Rep. 38 (7th Cir. 2005); *cf*. ***D.G. v. San Diego Unified Sch. Dist.*, 132 F.Supp.3d 1224, 328 Ed.Law Rep. 791 (S.D. Cal. 2015)** (preserving private school placement of student upon transfer from one district to another district in the state).

90 ***S.C. v. Palo Alto Unified Sch. Dist*., 63 IDELR ¶ 124 (N.D. Cal. 2014).**

91 ***Termine v. William S. Hart High Sch. Dist*., 219 F.Supp.2d 1049, 170 Ed.Law Rep. 242 (C.D. Cal. 2002).**

92 *T.M. v. Cornwall Cent. Sch. Dist.*, 752 F.3d 145, 305 Ed.Law Rep. 29 (2d Cir. 2014).

93 See, e.g., ***K.D. v. Dep't of Educ., State of Haw*., 665 F.3d 1110, 275 Ed.Law Rep. 585 (9th Cir. 2011);** *K.L. v. Berlin Borough Bd. of Educ*., 61 IDELR ¶ 216 (D.N.J. 2013); *Taylor F. v. Arapahoe Cnty. Sch. Dist.*, 954 F.Supp.2d 1197, 300 Ed.Law Rep. 220 (D. Colo. 2013); *J.K. v. Council Rock Sch. Dist.*, 58 IDELR ¶ 43 (E.D. Pa. 2011); *A.B. v. Franklin Twp. Cmty. Sch. Corp.*, 898 F.Supp.2d 1067, 291 Ed.Law Rep. 265 (S.D. Ind. 2012); *D.C. v. Chicago Bd. of Educ.*, 58 IDELR ¶ 166 (N.D. Ill. 2011); *cf*. ***G.M. v. Dry Creek Joint Elementary Sch. Dist*., 55 IDELR ¶ 249 (N.D. Cal. 2010)**(settlement agreement + IEP). *But see Doe v. E. Lyme Bd. of Educ*., 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015) ("The Board's obligation to fund stay–put placement is rooted in statute, not contract.").

94 *N.W. v. Boone Cnty. Bd. of Educ.*, 763 F.3d 611, 308 Ed.Law Rep. 616 (6th Cir. 2014); ***B.M. v. Encinitas Union Sch. Dist*., 2009 WL 29652, 109 LRP 367 (S.D. Cal. 2009)**. Conversely, where the settlement agreement for a private placement expired and the IEP team proposed a public placement, the court ruled that the public placement was the stay–put. *Peter G. v. Chicago Pub. Sch. Dist. No. 299*, 36 IDELR ¶ 237 (N.D. Ill. 2002).

95 Bd. of Educ. of Cnty. of Boone v. K.M., 65 IDELR ¶ 138 (S.D. W. Va. 2015).

96 *M.G. v. N.Y.C. Dep't of Educ*., 982 F.Supp.2d 240, 304 Ed.Law Rep. 873 (S.D.N.Y. 2013).

97 *Compare Verhoeven v. Brunswick Sch. Comm.*, 207 F.3d 1, 143 Ed.Law Rep. 54 (1st Cir. 1999); *Leonard v. McKenzie*, 869 F.2d 1558, 52 Ed.Law Rep. 498 (D.C. Cir. 1989), *with Ricci v. Beech Grove City Sch.*, 63 IDELR ¶ 187 (S.D. Ind. 2014).

98 ***R.R. v. Oakland Unified Sch. Dist.*, 62 IDELR ¶ 290 (N.D. Cal. 2014)**.

99 *R.B. v. Master Charter Sch.*, 532 Fed.Appx. 136, 299 Ed.Law Rep. 24 (3d Cir. 2013) ("[The charter school] may not skirt its responsibility toward R.B. merely because R.B. has the option of continuing her education at another high school within the School District .... The relevant inquiry is not whether a child has educational options outside of her current placement, but whether forcing a child to utilize those options will significantly affect the child's learning experience").

100 *See, e.g., Letter to Carroll*, 43 IDELR ¶ 116 (OSEP 2004).

101 *K.A. v. Fulton Cnty. Bd. of Educ.*, 741 F.3d 1195, 301 Ed.Law Rep. 35 (11th Cir. 2013) (citing *Hjortness v. Neenah Sch. Dist.*, 507 F.3d 1060, 227 Ed.Law Rep. 100 (7th Cir. 2007)).

102 *See, e.g., Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015); *Carl B. v. Mundelein High Sch. Dist. 120*, 20 IDELR 263 (N.D. Ill. 1993).

103 *Compare, e.g., C.H. v. Cape Henlopen Sch. Dist.*, 606 F.3d 59, 257 Ed.Law Rep. 39 (3d Cir. 2010); *Letter to Watson*, 48 IDELR ¶ 24 (OSEP 2007) (yes), *with* C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 218 Ed.Law Rep. 859 (11th Cir. 2007); Digre v. Roseville Sch. Indep. Dist. No. 623, 841 F.2d 245, 45 Ed.Law Rep. 523 (8th Cir. 1988); **Johnson v. Special Educ. Hearing Office, 287 F.3d 1176, 164 Ed.Law Rep. 52 (9th Cir. 2002)**; *Kuszewski v. Chippewa Valley Sch.*, 131 F.Supp.2d 926, 151 Ed.Law Rep. 845 (E.D. Mich. 2001), *aff'd on other grounds*, 58 Fed.Appx. 655, 173 Ed.Law Rep. 713 (6th Cir. 2003) (no).

104 *See, e.g., Doe v. E. Lyme Bd. of Educ.*, 790 F.3d 440, 319 Ed.Law Rep. 641 (2d Cir. 2015); ***Alexis R. v. High Tech Middle Media Arts Sch.*, 53 IDELR 259 (N.D. Cal. 2009)** (citing *Hale v. Poplar Bluffs R–I Sch.*, 280 F.3d 831, 161 Ed.Law Rep. 778 (8th Cir. 2002) and *Mr. C. v. Maine Sch. Admin. Dist.*, 538 F.Supp.2d 298, 230 Ed.Law Rep. 599 (D. Me. 2008)). A separate, open question is whether the compensatory education award extends to the stay–put period.

105 ***Termine v. William S. Hart High Sch. Dist.*, 219 F.Supp.2d 1049, 170 Ed.Law Rep. 242 (C.D. Cal. 2002).**

106 Without deciding the issue, the court in *Wagner v. Board of Education Montgomery County*, 340 F.Supp.2d 603, 617 n.6, 193 Ed.Law Rep. 172 (D. Md. 2004) observed:
Several courts have held that, while not entirely free from doubt, parents are not required to reimburse school systems for costs of maintaining "stay put" even when the parents do not prevail on the administrative appeal, thus making the "stay put" placement retroactively unnecessary. *See, e.g., Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ.*, 86 F.Supp.2d 354, 367–68, 142 Ed.Law Rep. 810 (S.D.N.Y. 2000), *aff'd*, 297 F.3d 195, 167 Ed.Law Rep. 591 (2d Cir. 2002); *T.B. v. Warwick Sch. Dept.*, 2003 WL 22069432, *7 (D.R.I.2003), *aff'd sub nom. T.B. ex rel. N.B. v. Warwick Sch. Comm.*, 361 F.3d 80, 186 Ed.Law Rep. 15 (1st Cir. 2004). *But see Verhoeven v. Brunswick Sch. Comm.*, 207 F.3d 1, 6 n.2, 143 Ed.Law Rep. 54 (1st Cir. 1999).
For additional support, see *Atlanta Indep. Sch. Sys. v. S.F.*, 740 F.Supp.2d 1335, 264 Ed.Law Rep. 225 (N.D. Ga. 2010)

107 ***A.D. v. State of Haw. Dep't of Educ.*, 727 F.3d 911, 296 Ed.Law Rep. 816 (9th Cir. 2013)**; *Houston Indep. Sch. Dist. v. V.P.*, 582 F.3d 576, 249 Ed.Law Rep. 585 (5th Cir. 2009).

108 *L.J. v. Broward Cnty. Sch. Bd.*, 850 F.Supp. 2d 1315, 282 Ed.Law Rep. 1113 (S.D. Fla. 2012). The flexible factors in this context include utility and feasibility, including fluidity of methodologies. *Id.* at 1321 and 1325. For the material–failure test for FAPE implementation cases, see, e.g., ***Van Duyn v. Baker Sch. Dist.*, 502 F.3d 811, 225 Ed.Law Rep. 136 (9th Cir. 2007).**

109 *See, e.g., Tina M. v. St. Tammany Parish Sch. Bd.*, 816 F.3d 57, 328 Ed.Law Rep. 512 (5th Cir. 2016); *J.C. v. Mendham Twp. Bd. of Educ.*, 29 F.Supp. 2d 214, 131 Ed.Law Rep. 743 (D.N.J. 1998). *But see A.P. v. Bd. of Educ. for City of Tullahoma*, —— F.Supp.3d —— (E.D. Tenn. 2016).

110 *See supra* note 9.

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