

# PUBLIC SCHOOL ADVOCACY GROUPS SEEK SUPREME COURT REVIEW OF “STAY-PUT” PLACEMENTS IN PRIVATE SCHOOLS

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One of the most important due process protections afforded to disabled students under the Individuals With Disabilities Education Act (IDEA) is the principle of “stay-put” or “pendency” placement. This provision prohibits school districts from changing a disabled student’s placement while there is a pending litigation. In essence, it requires the student’s placement to remain static until any and all legal challenges are finalized.

The application of a student’s pendency placement is particularly problematic when the student’s placement is at a private school. The federal courts have been split as to whether a school must maintain a disabled student at a private school during the entire time a legal action is pending. The U.S. Courts of Appeals for the Sixth and D.C. Circuits have held that a school’s obligation to maintain a student’s pendency placement ends once the district court decides the contested issue. To the contrary, the Ninth Circuit has ruled that a pendency placement must remain unchanged until final resolution of the dispute.

On February 20, 2014, the U.S. Court of Appeals for the Third Circuit weighed in on this issue. In *M.R. v. Ridley School District*, the Third Circuit agreed with the Ninth Circuit, ruling that a disabled student must “remain in the then-current educational placement” until all legal appeals are exhausted.

On Tuesday, the National School Boards Association (NSBA) and the National Association of State Directors of Special Education (NASDSE) filed a “friend of the court” (amicus) brief in the U.S. Supreme Court, seeking review of the *Ridley* decision. NSBA and NASDSE argue that the requirement of schools to keep disabled students in private schools is an undue burden and expense on public schools. By requiring school districts to pay for private school placements until all appeals are exhausted, the decision creates an incentive for parents to keep legal disputes pending for as long as possible and discourages collaboration between parents and school district.

Considering the 2-2 circuit split on this issue, there is a good chance that the Supreme Court will agree to review this issue. Obviously, any decision concerning pendency placement will have a significant impact on how school districts manage and respond to legal challenges under the IDEA. Stay tuned for any further

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developments.

