COMMENT

THE COSTS OF STAYING PUT: THE STAY-PUT PROVISION'S COMPETING INTERPRETATIONS AND FINANCIAL IMPLICATIONS

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The Individuals with Disabilities Education Act (IDEA), which ensures that disabled children are not discriminated against in their education, is one of the most significant pieces of civil rights legislation passed in the 20th century. IDEA's stay-put provision requires that, when parents and a school district disagree about the child's appropriate educational placement, the child must remain in the setting for the dispute's duration.

However, there is currently a circuit split on the stay-put provision's scope. The D.C. Circuit interprets the stay-put provision narrowly, holding that the stay-put provision ceases to apply after a trial court decides where the proper placement is, even if the case is appealed to the appellate level. In contrast, the Ninth Circuit adopted a broad interpretation, holding that the stay-put provision applies until the dispute is finally resolved, which includes any appeals to the appellate court. In the 2014 case *M.R. v. Ridley School District*, the Third Circuit agreed with the Ninth Circuit that the stay-put provision applies during any judicial appeals.

This Note argues that the *Ridley* Court correctly interpreted the stay-put provision. The *Ridley* Court's interpretation is correct because it comports with the statutory text, the legislative intent and history, the Department of Education's regulations, and Supreme Court precedent on the stay-put provision and IDEA as a whole. This Note, however, highlights that the *Ridley* Court's interpretation creates financial issues for cash-strapped school districts where a child is required to stay in an expensive private school during lengthy appeals. Therefore, this Note argues that Congress should amend IDEA to allow financially burdened school districts to move for a preliminary injunction requiring the child to transfer to the public school placement following a district court decision. This Note's proposal strikes a balance between the child's interest in receiving an appropriate and stable educational environment and the school district's ability to fund the placement while the dispute is pending.

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INTRODUCTION

Imagine parents with a child about to enter kindergarten who has a severe mental disability. Under the Individuals with Disabilities Act (IDEA), the public school district must provide the child with a free education that is tailored to the child's specialized needs.[1] The school district, however, concedes that none of its public schools are fit to do so. The only local school that can meet the child's needs is an expensive private school that specializes in educating children with such disabilities. Unfortunately, the parents cannot afford to pay for the expensive private tuition. Luckily, the parents and the school district agreed the child would attend the private school at the school district's expense, as IDEA's provisions require.[2]

After a couple of years, financing the child's private school tuition has been a significant burden on the fiscally constrained school district. Paying for the child's private school has cost the school district $35,000 more per year compared to the cost of educating the child in a public school.[3] Moreover, the school district now believes its schools are equipped to meet the child's specialized education. Consequently, the school district proposes to change the child's education placement to a public school within its district. But, the parents are not convinced that the public school is appropriate for their child's needs and challenge the school district's proposal in a due process hearing under IDEA.[4]

The "stay-put" provision of IDEA has an enormous impact on both the school district and the parents in the hypothetical scenario described above. First, the stay-put provision states that "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

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1. The language of the Individuals with Disabilities Act states that the school district must provide the child a "free public education" in the "least restrictive environment" possible. 20 U.S.C. § 1412(a)(1) (2012); *id.* § 1412(a)(5). The statute and its language will be discussed below. *See infra* Part I.B.

2. § 1412(a)(10)(A)(i).

3. Jay P. Greene & Marcus A. Winters, *Debunking a Special Education Myth*, EDUC. NEXT 67, 69 (Spring 2007), http://educationnext.org/files/ednext_20072_65.pdf [https://perma.cc/6HFR-JP8K] (using the Department of Education's statistics and calculating the average cost to fund a disabled child's education in a public school is about $15,117); *Forest Grove Sch. Dist. v. T.A.*, 675 F. Supp. 2d 1063, 1068 (D. Or. 2009), *aff'd*, 638 F.3d 1234 (9th Cir. 2011) (noting that the cost to fund the child's private school placement was $5,200 a month, which, assuming a nine-month school year, means the school district spent $46,800 a year). To come up with the figure used here, I subtracted the average cost to fund a disabled child's education in public school from the estimated yearly cost the school district spent in *Forest Grove*.

4. 20 U.S.C. § 1415(f).

child . . . ."[5] The "proceedings conducted pursuant to this section" are due process hearings, state administrative reviews, and "civil action[s]" for review brought "in any State court of competent jurisdiction or in a district court of the United States."[6] Accordingly, once the parents in the hypothetical scenario initiate an administrative challenge to the school district's proposal, their child must remain in the private school at the school district's expense while the administrative body decides whether the public or private school placement is appropriate. Moreover, if the parents lose at the administrative level and bring a "civil action" in a "[s]tate court of competent jurisdiction or in a district court of the United States,"[7] their child must continue to remain in the private school at the school district's expense.[8]

However, the circuit courts are split on whether the scope of the stay-put provision extends beyond the state trial court or federal district court level. The D.C. Circuit has adopted the narrow interpretation, holding that the stay-put provision does not apply beyond the state trial court or federal district court level.[9] In contrast, the Ninth Circuit adopted the broad interpretation, ruling that that the stay-put rule applies until the final resolution of the dispute, which includes the appellate level.[10] In the 2014 case *M.R. v. Ridley School District*,[11] the Third Circuit was faced with deciding which interpretation was correct.[12] Examining the arguments on both sides, the Third Circuit correctly adopted the broad interpretation because of the strong supporting legal principles and notable advantages for the child it creates.[13]

The implications of deciding which interpretation is correct are significant. First, the stay-put provision's scope has an enormous financial impact. With backlogs on many appellate court dockets, parties often have to wait more than one year from the date of filing notice of appeal to the date of final disposition.[14] Under the broad view,

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5. *Id.* § 1415(j).

6. *Id.*; *id.* § 1415(e)(2).

7. *Id.*

8. *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 119 (3d Cir. 2014) *cert. denied*, 135 S. Ct. 2309 (2015).

9. *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018, 1024 (D.C. Cir. 1989).

10. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1038 (9th Cir. 2009).

11. *Ridley*, 744 F.3d 112 (3d Cir. 2014).

12. *Id.* at 115.

13. *Id.* at 125.

14. U.S. COURTS, MEDIAN TIMES FOR CIVIL AND CRIMINAL CASES TERMINATED ON THE MERITS 1 (2013), www.uscourts.gov/Statistics/JudicialBusiness/2013/statistical-tables-us-courts-appeals.aspx [https://perma.cc/GRJ4-SLYL] (noting the Ninth and D.C. Circuits take

school districts would have to continue paying for private school tuition and transportation costs until the appellate court enters a judgment on the issue, and beyond if the losing party appeals to the state's highest court or the United States Supreme Court. In all, this could total tens of thousands of dollars per child on an already fiscally burdened school district.[15] Additionally, if the parents ultimately prevail, the parents can recover reasonable attorney fees from the school district,[16] which can also cost the school districts tens of thousands of dollars.[17]

Second, unpredictability poses a problem for many cash-strapped school districts. It is hard for a school district to predict when a high-needs student is going to move into the district, which makes budgeting a problem. The financial implications of the holding in *Ridley* could exasperate the budgeting problems that the unpredictability issue creates for school districts. On the other hand, interpreting the stay-put provision narrowly to cease applying after a district court decision could result in parents being "faced with the untenable choice of removing their child from a setting the appeals court might find appropriate or risking the burden of private school costs they cannot afford for the period of the appeal."[18]

Finally, the scope of the stay-put provision affects the stability of the child's education. The narrow interpretation could result in the child bouncing between educational settings if the trial court rules that the public school is the appropriate setting and the appellate court rules that the private school is the appropriate setting.[19] This would go against

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more than one year to dispose of an appeal from a district court decision and the average time between the filing of a notice of appeal of a district court decision to the circuit court issuing a decision is 9.6 months); Court Statistics Project, *Caseload Highlights* (March 2007), http://www.courtstatistics.org/~/media/Microsites/Files/CSP/DATA%20PDF/Vol14Num1CivilTrialsonAppeal1.ashx [https://perma.cc/S9YM-9R9M] (examining twenty-two state appellate courts, the study found the average time to dispose a case on appeal from the trial court was 503 days).

15. *See* Greene & Winters, *supra* note 3, at 69 (concluding that the average cost to finance a disabled child in a private school placement is $10,463 more per year compared to the cost of educating the child in a public school placement).

16. 20 U.S.C. § 1415(i)(3)(B) (2012). If the school district prevails, it can recover fees from the parent's attorney, but only if the claim was frivolous or if "the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation." *Id.* § 1415(i)(3)(B)(i).

17. *See Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 764 (8th Cir. 2011) (noting that the district court awarded the prevailing parents $25,000 in attorney fees).

18. *Ridley*, at 126.

19. *See Joshua A. ex rel. Jorge A v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1040 (9th Cir. 2009).

Congress' intent "to prevent disruption of the child's education throughout the dispute process."[20]

This Note argues that the *Ridley* court correctly interpreted the stay-put provision broadly to apply until the placement dispute is finally resolved, which includes any appeals. Part I of this Note discusses the predecessors to IDEA, IDEA and its modern amendments, the stay-put provision, Supreme Court precedent pertaining to the stay-put provision, and the circuit split surrounding the stay-put provision. Part II argues that the *Ridley* court's interpretation is correct because it comports with the statutory text, the legislative intent and history, the Department of Education's regulations, and Supreme Court precedent on the stay-put provision and IDEA as a whole. In Part II, however, this Note recognizes the financial issues that the *Ridley* court's interpretation poses and argues that Congress should amend IDEA to allow school districts to move for a preliminary injunction requiring children to transfer to the public school placement following a district court decision.

I. IDEA, THE STAY-PUT PROVISION, AND THE CIRCUIT SPLIT

IDEA is a comprehensive statutory scheme designed to protect the civil rights of disabled children. An important part of the statutory scheme is the stay-put provision. Despite the stay-put provision's importance, a circuit split regarding the provision's scope remains unsettled. This Part analyzes the predecessors of IDEA, its subsequent amendments, the stay-put provision, Supreme Court precedent discussing the stay-put provision's meaning, and the current circuit split.

A. History of Special Education Law and IDEA's Predecessors

When Congress first addressed the issue of disabled children suffering from education discrimination in the 1950s, Congress was not dealing with a novel problem. Education discrimination against disabled children had been a problem since states began providing public school education to children.[21] *Brown v. Board of Education*,[22] which established in 1954 that children of all races were entitled to equal

20. *Id.*; *see infra* Part I.C.

21. *Watson v. City of Cambridge*, 32 N.E. 864 (Mass. 1893) (upholding the expulsion from public school of a child who was "weak in mind"); *Beattie v. Bd. of Educ.*, 172 N.W. 153, 154 (Wis. 1919) (upholding the expulsion of a student who had a speech impediment, displayed facial contortions, and drooled uncontrollably).

22. 347 U.S. 483 (1954).

education opportunities,[23] provided the legal and legislative momentum needed to address education discrimination of disabled children.[24]

In the aftermath of *Brown*, the federal government attempted to tackle education discrimination of disabled children in the 1960s. In 1966, Congress established a grant program, which sought to aid the states in developing and improving the education of disabled children.[25] Congress expanded the grant program when it passed the Education of the Handicapped Act of 1970 (EHA).[26] The expansion aimed to "stimulat[e] the States to develop educational resources and to train personnel for educating the handicapped."[27]

However, EHA was ineffective because it lacked enforcement mechanisms that parents could use if their child's education was denied or inappropriate.[28] Its ineffectiveness was reflected in statistical studies. In 1975, "1.75 million children of school age were entirely excluded from the public schools and 2.2 million children were in programs that did not meet their educational needs."[29] In the face of congressional failure to address EHA's shortcomings, some courts stepped in and held disabled children were entitled access to a public education.[30] Consequently, Congress passed the Education of All Handicapped Children Act (EAHCA) in 1975 to respond to the ineffectiveness of the EHA and the action by the courts. EAHCA would later become amended and renamed as the Individuals with Disabilities Education Act.[31]

B. EAHCA, IDEA, and Modern Amendments

The legislative history of EAHCA demonstrates that Congress intended the Act to be an expansive legislative scheme that would

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23. *Id.*

24. *See* Andrea Blau, *The IDEIA and the Right to an "Appropriate" Education*, 2007 B.Y.U. EDUC. & L.J. 1, 8.

25. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 179–80 (1982).

26. Margaret Corning Boldrick, *Education—Handicapped—Free Appropriate Public Education of Handicapped Children Requires Personalized Instruction and Support Services to Produce Beneficial Results but Does Not Require Reaching Full Potential of Handicapped Student*, 14 ST. MARY'S L.J. 425, 431 (1983).

27. *Rowley*, 458 U.S. at 180.

28. MARK C. WEBER, SPECIAL EDUCATION LAW AND LITIGATION TREATISE § 1.3(1) (Supp. VII 1999).

29. Mark C. Weber, *Reflections on the New Individuals with Disabilities Education Improvement Act*, 58 FLA. L. REV. 7, 10 (2006).

30. *Id.*

31. Megan Roberts, Comment, *The Individuals with Disabilities Education Act: Why Considering Individuals One at a Time Creates Untenable Situations for Students and Educators*, 55 UCLA L. REV. 1041, 1049 (2008).

secure appropriate education for disabled children and promote major social change. The purpose of EAHCA was:

> to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected, to assist States and localities to provide for the education of all handicapped children, and to assess and assure the effectiveness of efforts to educate handicapped children.[32]

Echoing *Brown*, Congress justified EAHCA as necessary to effectuate the Constitution's mandate of equal protection of the laws.[33] Congress also justified EAHCA as being a long-term benefit on society, because educated disabled children could "become productive citizens, contributing to society instead of being forced to remain burdens."[34] EAHCA defined "handicapped children" broadly to include "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired children, [and] children with specific learning disabilities."[35]

Rather than creating a set of detailed substantive rights of disabled children, EAHCA created a relationship between their parents and school district personnel, and developed a set of procedures to regulate that relationship.[36] EACHA relied on the relationship between the parents and the implementing local school district, and the procedures that regulated that relationship, to achieve the act's substantive goals.[37] EAHCA mandated that all public school districts provide a "free appropriate public education" (FAPE). EAHCA defined a FAPE as:

> special education and related services which (A) have been provided at public expense, under public supervision and direction, and without charge, (B) meet the standards of the State educational agency, (C) include an appropriate preschool, elementary, or secondary school education in the

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32. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, sec. 601, § 3(c), 89 Stat. 773, 775.

33. S. REP. NO. 94-168, at 6 (1975).

34. *Id.* at 9.

35. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 181 (1982).

36. David M. Engel, *Law, Culture, and Children with Disabilities: Educational Rights and the Construction of Difference*, 1991 DUKE L.J. 166, 167.

37. *Id.* at 177.

> State involved, and (D) are provided in conformity with the individualized education program . . . .[38]

EAHCA specified that the FAPE must be tailored to a disabled child's particular needs through an Individualized Education Program (IEP).[39] The IEP can either be in a public school or a private school that the parents and the school district agreed to and which the school district is financing to provide the child with a FAPE.[40] The IEP must be developed and agreed upon at a meeting between a "qualified representative of the local educational agency, the child's teacher, the child's parents or guardian, and, where appropriate, the child . . . ."[41] The IEP must be written and contain

> (A) a statement of the present levels of educational performance of such child, (B) a statement of annual goals, including short-term instructional objectives, (C) a statement of the specific educational services to be provided to such child, and the extent to which such child will be able to participate in regular educational programs, (D) the projected date for initiation and anticipated duration of such services, and (E) appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether instructional objectives are being achieved.[42]

Therefore, EACHA anticipated that the disabled student's appropriate, individually specialized program will be created from a "give-and-take" between the parents and the implementing school district.[43]

EAHCA also provided the enforcement mechanisms that were lacking in prior federal law. For example, parents of disabled children must be notified of any proposed change in "the identification, evaluation, or educational placement of the child or the provision of a [FAPE] to the child . . . ."[44] Moreover, a parent is entitled to bring a due process complaint challenging "any proposed change in the 'identification, evaluation, or education placement of the child or the provision of a [FAPE] to such child' . . . ."[45] EAHCA provided that

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38. 20 U.S.C. § 1401(18) (1976).
39. *Rowley*, 458 U.S. at 181.
40. *Florence Cty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 12 (1993).
41. *Rowley*, 458 U.S. at 182.
42. § 1401(19).
43. Engel, *supra* note 36, at 177.
44. § 1415(b)(1)(C).
45. *Rowley*, 458 U.S. at 182.

such a challenge must be conducted in an impartial, formal, and adversarial hearing by the state or local educational agency.[46] EAHCA further stated that a parent who loses in an administrative proceeding may bring a "civil action . . . which action may be brought in any State court of competent jurisdiction or in a district court of the United States,"[47] and the reviewing court "shall grant such relief as the court determines is appropriate."[48]

In 1990, Congress amended EAHCA and renamed it the Individuals with Disabilities Education Act.[49] Congress again amended IDEA in 1997 and 2004.[50] IDEA amendments in 1990, 1997, and 2004 did not change the significant provisions discussed above, even while it made some significant amendments, thereby demonstrating Congress's strong commitment to protecting disabled childrens' right to education.[51]

C. The Stay-Put Provision

EAHCA provided procedural safeguards for the disabled child as well, one of which was the stay-put provision. Despite EAHCA being amended and renamed IDEA in 1990,[52] and IDEA being amended in 1997[53] and 2004,[54] the stay-put provision's language has not changed since its inclusion in EAHCA in 1975.[55] The stay-put provision states that "[d]uring the pendency of any proceedings conducted pursuant to [section 1415], unless the State or local educational agency and the parents [or guardian] otherwise agree, the child shall remain in the then current educational placement of such child . . . ."[56]

Section 1415 contains three proceedings that the stay-put provision applies to: due process hearings, state administrative reviews, and "civil action[s]" for review brought "in any State court of competent

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46. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 615(b)(2), 89 Stat. 773, 788.

47. 20 U.S.C. § 1415(e)(2).

48. *Id.*

49. Education of the Handicapped Act Amendments of 1990, Pub. L. No. 101-476, sec. 601(a), § 901(a)(1), 104 Stat. 1103, 1141–42.

50. Andrea Blau, *The IDEIA and the Right to an "Appropriate" Education*, 2007 BYU EDUC. & L.J. 1, 3.

51. *See* Roberts, *supra* note 31, at 1049–50; Blau, *supra* note 50, at 3.

52. Education of the Handicapped Act Amendments of 1990, § 901(a)(1).

53. Individuals with Disabilities Education Act Amendments of 1997, Pub. L. No. 105-17, 111 Stat. 37.

54. Individuals with Disabilities Education Act Amendments of 2004, Pub. L. No. 108-446, 118 Stat. 2647.

55. Education for All Handicapped Children Act of 1975, Pub. L. No. 94-142, § 615(e)(3), 89 Stat. 773, 789.

56. 20 U.S.C. § 1415(j) (2012).

jurisdiction or in a district court of the United States."[57] The "then current educational placement" is the IEP the child was in at the time the challenge commenced, which in most cases is a public school providing a FAPE or a private school that the state or local educational agency was financing to satisfy its obligation to provide the child with a FAPE. However, the stay-put rule will also apply when parents unilaterally remove their child from her then current IEP to an alternative setting, if the reviewing administrative official or body subsequently agrees that the current IEP does not satisfy the FAPE while the alternative setting does.[58]

In essence, the stay-put provision acts as an automatic preliminary injunction, requiring the child to remain in the educational placement he or she was in at the time the dispute formerly began.[59] The provision acts as a substitute for the traditional preliminary injunction test, which requires the moving party to show (1) he or she is likely to succeed on the merits; (2) he or she is likely to suffer irreparable harm in the absence of an injunction; (3) that the balance of equities tips in his or her favor; and (4) an injunction is in the public interest.[60] The automatic nature of the provision is reflected in comments made by Senator Harrison Williams, one of the principal authors of EAHCA.[61] Senator Williams said that once the dispute process formally began, the stay-put provision would apply "during the pendency of any administrative or judicial proceedings regarding a complaint."[62] Thus, once a parent or school district begins the adversarial process by commencing a due process hearing, state administrative review, or civil action, the stay-put provision automatically kicks in and remains in effect.

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57. § 1415(i)(2)(A).

58. *Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 371–72 (1985); 34 C.F.R. § 300.518(d) (2015).

59. *E.g.*, *A.D. ex rel. L.D. v. Haw. Dep't of Educ.*, 727 F.3d 911, 914 (9th Cir. 2013); *Casey K. ex rel. Norman K. v. St. Anne Cmty. High Sch. Dist. No. 302*, 400 F.3d 508, 511 (7th Cir. 2005); *Drinker ex rel. Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 864 (3d Cir. 1996); *Zvi D. ex rel. Shirley D. v. Ambach*, 694 F.2d 904, 906 (2d Cir. 1982). *See Honig v. Doe*, 484 U.S. 305, 328 (1988) (noting that the stay-put provision "creates a presumption in favor of the child's current educational placement which school officials can overcome only by showing that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others").

60. *E.g.*, *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). The stay-put provision reflects Congress's intent to substitute a categorical rule maintaining the status quo for the court's discretionary consideration of the traditional preliminary injunction factors of irreparable harm, a likelihood of success on the merits, and balance of the equities. *Drinker*, 78 F.3d at 864 (quoting *Ambach*, 694 F.2d at 906).

61. *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018, 1023 (D.C. Cir. 1989).

62. *Id.* (quoting 121 Cong. Rec. 37,416 (1975)).

The stay-put provision has several purposes. First, the provision aims "to reduce the chance of a child being bounced from one school to another, only to have the location changed again by an appellate court."[63] Second, the provision "acts as a powerful protective measure to prevent disruption of the child's education throughout the dispute process."[64] Finally, its automatic injunction nature demonstrates that Congress felt that all disabled children must remain in their current educational placement during the proceedings, notwithstanding the strength of the child's case[65] or the likelihood the child will be harmed by a change in placement.[66]

D. Supreme Court Precedent on the Stay-Put Provision

While there is little Supreme Court precedent regarding the stay-put provision, there are two Supreme Court cases that constitute the principle stay-put provision decisions. The first case is *School Committee of the Town of Burlington, Massachusetts v. Department of Education of Massachusetts*.[67] The second case is *Honig v. Doe*.[68] The two decisions will be discussed below.

1. *SCHOOL COMMITTEE OF THE TOWN OF BURLINGTON, MASSACHUSETTS V. DEPARTMENT OF EDUCATION OF MASSACHUSETTS*

Town of Burlington was the first Supreme Court decision on the stay-put provision. In *Town of Burlington*, the child attended a public school under an IEP requiring tutoring and counseling.[69] Due to the child's poor performance under the placement, his parents and the school district officials agreed the IEP was not meeting his needs.[70] However, the parents and school officials could not agree on a new

63. *Flour Bluff Indep. Sch. Dist. v. Katherine M. ex rel. Lesa T.*, 91 F.3d 689, 695 (5th Cir. 1996).

64. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1040 (9th Cir. 2009).

65. *Drinker*, 78 F.3d at 864–65.

66. *A.D. ex rel. L.D. v. Haw. Dep't of Educ.*, 727 F.3d 911, 914 (9th Cir. 2013).

67. 471 U.S. 359 (1985). While *Town of Burlington* pertained to the stay-put provision when it was part of the EAHCA, its language is identical to the current stay-put provision in 20 U.S.C. § 1415(j) (2012). *See supra* text accompanying notes 49, 51.

68. 484 U.S. 305 (1988). While *Honig* pertained to the stay-put provision when it was part of EAHCA, its language is identical to the current stay-put provision in § 1415(j). *See supra* text accompanying notes 49, 51.

69. *Town of Burlington*, 471 U.S. at 361.

70. *Id.* at 361–62.

placement.[71] The school district proposed an IEP that would place the child in a class of six children with special academic and social needs located at a different school within the school district.[72]

The child's father rejected the proposed IEP, requested a due process hearing, and not wanting his child educated in a poor setting any longer, enrolled the child in a private school at his own expense.[73] The administrative officer ruled in favor of the father, holding that (1) the proposed public school setting was inappropriate; (2) the private setting was appropriate; (3) the school district must pay for the child's private school tuition and transportation going forward; and (4) the school district must reimburse the father for the private school tuition accrued from the moment the father rejected the proposal and enrolled the child in the private school.[74] The school district appealed and the district court reversed, holding that the proposed public school setting was proper.[75]

The case made its way to the Supreme Court, where the school district argued that (1) under the stay-put provision, a court in a "civil action" does not have the authority to order a school district to reimburse parents for a private school setting that ultimately is deemed to be appropriate; and (2) parents waive their right to the stay-put provision if they reject a proposed IEP and unilaterally place a child in a private school without the local school authority's consent.[76] For the first question, the Court noted that a court in a "civil action" may bring whatever relief it deems "appropriate."[77] To interpret what may be "appropriate," the Court looked to EAHCA's purpose, which was to provide a FAPE designed to meet the child's unique needs."[78] The Court noted that in light of EAHCA's broad purpose, it was "clear beyond cavil" that a court could order a school district to reimburse parents for a private school setting that ultimately is deemed to be appropriate.[79]

For the second question, the Court again looked to EAHCA's purpose to hold that a parent who unilaterally takes her child out of her current placement while a challenge is pending at the administrative level does not waive her right to the stay-put provision. The Court stated that an opposite reading would mean that parents are forced to

71. *Id.* at 362.
72. *Id.*
73. *Id.*
74. *Id.* at 363.
75. *Id.*
76. *Id.* at 367.
77. *Id.* at 369.
78. *Id.*
79. *Id.* at 370.

leave the child in what may turn out to be an inappropriate educational placement or to obtain the appropriate placement only by sacrificing any claim for reimbursement.[80] The court concluded "[t]he Act was intended to give handicapped children both an appropriate education and a free one; *it should not be interpreted to defeat one or the other of those objectives*."[81]

2. *HONIG V. DOE*

Honig was the second significant Supreme Court case on the stay-put provision. *Honig* concerned the placement of two mentally disabled children, whose disruptive behavior in school was difficult for school officials to control.[82] One child was prone to violent, physical outbursts against classmates.[83] The other child was prone to constant "disruptive behavior—which included stealing, extorting money from fellow students, and making sexual comments to female classmates . . . ."[84] The school district sought to expel both students for their disruptive behavior and the parent brought an action challenging the expulsion,[85] thereby triggering the stay-put provision. The school district argued that the court should read a "dangerousness exception" into the stay-put provision,[86] which would allow a school district to remove a student from his or her then-current placement "for dangerous or disruptive conduct growing out of [his or her] disabilities."[87]

The Court agreed with the school district. The Court held that while a school district must adhere to the stay-put provision, an administrative reviewing body may change a child's placement, notwithstanding the stay-put provision, upon a showing "that maintaining the child in his or her current placement is substantially likely to result in injury either to himself or herself, or to others."[88] The Court based its holding on the fact that:

> one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by *schools*, not courts, and one of the [stay-put provision's purposes], therefore, was "to prevent *school* officials from removing a child [from her then-

80. *Id.* at 372.
81. *Id.* (emphasis added).
82. *Honig v. Doe*, 484 U.S. 305, 312 (1988).
83. *Id.* at 312–13.
84. *Id.* at 315.
85. *Id.* at 314–15.
86. *Id.* at 317.
87. *Id.* at 308.
88. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1039 (9th Cir. 2009) (quoting *Honig*, 484 U.S. at 328).

> current placement] over the parents' objection pending completion of the review proceedings."[89]

Thus, a subsequent removal by the administrative officer or court because the child posed a danger to his or her classmates did not contravene the purpose of the stay-put provision.

Since *Honig*, the Supreme Court has not handed down a decision on the stay-put provision. Consequently, a circuit split regarding the stay-put provision's scope has remained unsettled. The circuit split will be discussed below.

E. The Circuit Split on the Stay-Put Provision

A circuit split on how far up the judicial hierarchy the stay-put provision applies currently exists. The D.C. Circuit interprets the stay-put provision narrowly, holding that the provision ceases to apply when a district court renders a decision on the child's appropriate placement.[90] In contrast, the Third and Ninth Circuits interpret the provision broadly, holding that the provision applies during any judicial proceeding, including appeals, until the dispute is fully resolved.[91]

1. THE D.C. CIRCUIT'S INTERPRETATION OF THE STAY-PUT PROVISION

The D.C. Circuit, in *Andersen ex rel. Andersen v. District of Columbia*,[92] was the first federal circuit court to address the scope of the stay-put provision. In *Andersen*, the District of Columbia school district proposed that three disabled students be placed in public schools for learning-disabled children.[93] The parents rejected the school district's proposed placements and instead enrolled their children in private schools that provided full-time education programs for special needs students.[94]

The parents then requested a due process hearing under IDEA contesting the appropriateness of the school district's proposed placements.[95] The administrative officer ruled in the parents' favor, finding the school district's proposal inappropriate and ordered the

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89. *Honig*, 484 U.S. at 327 (emphasis in original) (quoting *Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass.,* 471 U.S. 359, 373 (1985)).

90. *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018 (D.C. Cir. 1989).

91. *Rocklin*, 559 F.3d at 1038; *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 125 (3d Cir. 2014), *cert. denied*, 135 S. Ct. 2309 (2015).

92. *Andersen*, 877 F.2d 1018.

93. *Id.* at 1020.

94. *Id.*

95. *Id.*

school district to pay the children's tuition at the private school.[96] The next year, the school district proposed placements at the same public schools for the children, and the parents again challenged the proposals in a due process hearing.[97] This time, the administrative officer found the school district's proposals appropriate.[98] The parents appealed to the district court, where the court upheld the decisions finding the public school placement appropriate.[99] The parents appealed to the D.C. Circuit and argued the stay-put provision applied while the case was pending and, therefore, the children were required to stay put in "their current education placement[]," the private schools, at the school district's expense.[100]

The D.C. Circuit adopted a narrow interpretation of the stay-put provision and, therefore, held that the children were not entitled to stay-put in the private schools at the school district's expense. The court made its decision on three grounds. First, it held that the stay-put provision's plain meaning, and related provisions in IDEA, mandated a narrow interpretation that the provision did not apply after the district court rendered a decision.[101] Specifically, the court noted that the only "proceedings" the statute referred to were due process hearings, state administrative review hearings, and civil actions brought in a state or federal trial court.[102] The D.C. Circuit argued that the stay-put provision therefore only applied during the pendency of those three specific proceedings enumerated in the statute.[103] Accordingly, the provision would only apply during the civil action while it is in the state or federal trial court that it was brought in.

Second, the D.C. Circuit also stated that other provisions of IDEA demonstrate that the stay-put provision only applies to the trial court level. The court noted that the only other references to court proceedings in the statute is 20 U.S.C. § 1415(i)(2)(C).[104] Section 1415(i)(2)(C) provided that in any civil action brought under the IDEA, the "court" "(i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate."[105] A trial

96. *Id.*
97. *Id.*
98. *Id.* at 1020.
99. *Id.*
100. *Id.* at 1023.
101. *Id.*
102. *Id.*
103. *Id.*
104. *Id.* (citing 20 U.S.C. § 1415(e)(2), which would later be recodified as 20 U.S.C. § 1415(i)(2)(C)).
105. § 1415(i)(2)(C).

court's role includes fact finding,[106] while an appellate court is precluded from fact finding and must make its determination based on the record from the district court.[107] According to the D.C. Circuit, the fact that additional evidence can be introduced and that the court must "bas[e] its decision based on the preponderance of the evidence"[108] demonstrates that a "civil action" only applies to proceedings at the trial court level.

Finally, the D.C. Circuit ruled that Supreme Court precedent in *Honig* required a narrow interpretation of the statute.[109] The D.C. Circuit cited *Honig's* holding that the purpose of the stay-put provision was to protect children from unilateral displacement *by the school district*.[110] The D.C. Circuit held that a court decision to change the child's placement does not contravene the stay-put provision's purpose of preventing unilateral change by school districts.[111] Therefore, according to the court, the stay-put provision does not apply during appellate review.[112]

No other circuit court has adopted the narrow interpretation.[113] In fact, no other circuit court addressed the issue in a published opinion for thirty years after *Andersen*. However, in 2009 when the Ninth

106. *Anderson v. City of Bessemer City*, 470 U.S. 564, 574 (1985) (noting that "[t]he trial judge's major role is the determination of fact, and with experience in fulfilling that role comes expertise.").

107. *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980) (stating that "the proper role of the court of appeals is not to reweigh the equities or reassess the facts but to make sure that the conclusions derived from those weighings and assessments are juridically sound and supported by the record.").

108. § 1415(i)(2)(C).

109. *See Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018 (D.C. Cir. 1989).

110. *Id.*

111. *Id.* at 1023-24.

112. *Id.* at 1023.

113. The Sixth Circuit also adopted the narrow interpretation of the stay-put provision in an unpublished opinion. *Kari H. ex rel. Dan H. v. Franklin Special Sch. Dist.*, 125 F.3d 855 (6th Cir. 1997). When the Ninth Circuit rejected the narrow interpretation in *Joshua A. ex rel. Jorge A. v. Rocklin Unified School District*, it did not mention the Sixth Circuit's unpublished opinion. *See* 559 F.3d 1036 (9th Cir. 2009). In *Ridley*, the Third Circuit stated that "[t]he only two circuits to have decided the issue in *published* opinions are split." *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 125 (3d Cir. 2014), *cert. denied,* 135 S. Ct. 2309 (2015) (emphasis added). Due to *Kari*'s unbinding nature and the fact the Third and Ninth circuits gave the case little to no weight, this Note will not be discussing it. Some district courts, however, have followed the narrow interpretation. *Tammy S. v. Reedsburg Sch. Dist.*, 302 F. Supp. 2d 959, 980–81 (W.D. Wis. 2003) (rejecting plaintiff's request to extend the stay-put provision while the case was appealed to the Seventh Circuit and granting defendant's request to terminate Jordan's current stay-put placement).

Circuit was faced with the issue, the court correctly rejected the holding in *Andersen* and created a circuit split that still exists today.[114]

2. THE NINTH CIRCUIT'S INTERPRETATION: CREATING THE CIRCUIT SPLIT

In 2009, the issue of whether the stay-put provision applies beyond a district court decision came before the Ninth Circuit in *Joshua A. v. Rocklin Unified School District*.[115] In *Joshua*, the child suffered from autism, and his parents and the school district agreed upon an IEP that required the school district to co-fund forty hours a week of in-home educational services administered by a private agency.[116] Two years later, the school district proposed a new IEP that required the child to attend a public school within the district.[117] The parents rejected the proposal, kept their child in the in-home placement, and requested a due process hearing.[118] Thus, the stay-put provision applied, and the child remained in the in-home placement.

At a due process hearing, the administrative officer found that the district's proposal provided a FAPE under IDEA.[119] The parents appealed to the district court, which affirmed the administrative officer's decision.[120] The parents then appealed to the Ninth Circuit, where they argued that the stay-put provision required their child to continue remaining in his in-home placement until the dispute was resolved.[121]

The Ninth Circuit rejected the D.C. Circuit's narrow interpretation and ruled that the stay-put provision applies during an appeal from a trial court's ruling.[122] The Ninth Circuit based its decision off an analysis of the stay-put provision's text, the Department of Education's (DOE) regulations pertaining to the stay-put provision, congressional intent, and policy considerations underlying the stay-put provision and

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114. *Rocklin*, 559 F.3d at 1039. Prior to *Rocklin*, some state appellate courts and federal district courts rejected *Andersen* and adopted the broad interpretation. *N. Kitsap Sch. Dist. v. K.W. ex rel. C.W.*, 123 P.3d 469, 482–83 (Wash. Ct. App. 2005); *Ringwood Bd. of Educ. v. K.H.J. ex rel. K.F.J.*, 469 F. Supp. 2d 267, 270–71 (D.N.J. 2006).

115. 559 F.3d 1036 (9th Cir. 2009).

116. *Id.* at 1037.

117. Complaint ¶¶ 12–16, *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 2008 WL 906243 (E.D. Cal. Mar. 31, 2008) (No. CV 07-01057 LEW KJM).

118. *Id.* ¶¶ 20–21.

119. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 319 Fed. App'x 692, 694 (9th Cir. 2009).

120. *Id.* at 695.

121. *Rocklin*, 559 F.3d at 1037.

122. *Id.* at 1040.

IDEA.[123] The court recognized the competing interests at stake and especially noted the financial burden a broad interpretation of the statute would impose upon school districts. The court said competing views on the stay-put provision "pit[] the parents of the child, understandably anxious to secure the child's effective education, against a school district conscious of its educational mission and of its limited funds."[124] However, the school district's financial burden under a broad reading was not persuasive to the court, as it stated "[t]he solution to this conflict is found in what Congress has prescribed."[125]

3. *M.R. v. Ridley School District*: The Third Circuit Takes a Side

In the 2014 case *M.R. v. Ridley School District*, the Third Circuit was faced with deciding which side of the circuit split to adopt.[126] In *Ridley*, the child attended public school, receiving special services to address her learning disabilities.[127] After the child completed first grade, however, the parents believed that the public school was not meeting their daughter's needs and thus failing to provide the child a FAPE.[128] Consequently, they requested a due process hearing and, not wanting to keep their child in an allegedly inappropriate educational setting, enrolled their child at a private school that specialized in educating students with learning disabilities.[129]

The administrative officer ruled in favor of the parents.[130] Specifically, the officer ruled (1) the public school setting was inappropriate; (2) the private school the child was enrolled in was appropriate; and (3) the school district must fund the tuition and transportation costs for the child to attend the private school.[131] Because the administrative officer deemed the private school setting to be the proper FAPE placement, the private school became the "then-current educational placement" for purposes of the stay-put provision.[132] Thus, when the school district appealed the administrative decision in the district court, the child was required to remain at the private school.

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123. *Id.* at 1038–40.
124. *Id.* at 1037.
125. *Id.*
126. 744 F.3d 112, 125 (3d Cir. 2014), *cert. denied*, 135 S. Ct. 2309 (2015).
127. *Id.* at 115.
128. *Id.*
129. *Id.* at 115, 117.
130. *Id.* at 116.
131. *Id.*
132. *Id.* at 119.

The district court reversed the administrative decision, finding that the public school setting provided a FAPE.[133] The parents appealed and the Third Circuit affirmed.[134] The school district refused to pay for the private school tuition during the appeal and the parents asked for reimbursement, arguing that the stay-put provision applied while the case was pending in the appeals court and thus the child was required to stay at the private school at the school district's expense.[135] The school district argued that the stay-put provision, and the school district's obligation to pay for the private school tuition, ended after the district court ruled the public school placement was a proper FAPE.[136]

The *Ridley* Court surveyed the circuit split and correctly sided with the Ninth Circuit, reading the stay-put provision broadly to apply until the placement dispute is finally resolved, including any appeals beyond the district court.[137] Like the Ninth Circuit in *Joshua*, the *Ridley* Court held that the statute's plain meaning, the DOE's regulations, and the legislative intent behind both the stay-put provision and IDEA dictated a broad interpretation.[138] The school district appealed to the Supreme Court and the Court declined to hear the case.[139] Thus, a circuit split remains on the stay-put provision's scope.

Below, this Note argues that the *Ridley* Court correctly interpreted the stay-put provision broadly to apply until the placement dispute is resolved. The *Ridley* Court's interpretation is correct because it comports with the statutory text, the legislative intent and history, the DOE's regulations, and Supreme Court precedent on the stay-put provision and IDEA as a whole. This Note, however, recognizes the financial issues that the broad interpretation poses. Thus, this Note also argues that Congress should amend IDEA to allow school districts to move for a preliminary injunction requesting the child to be placed in the public placement following a district court decision on the placement.

II. THE CORRECT INTERPRETATION OF THE STAY-PUT PROVISION AND ITS FINANCIAL IMPLICATIONS

This Part will examine the circuit split on the stay-put provision and demonstrate that the *Ridley* Court correctly adopted the broad interpretation. The first portion of this Part will argue that the broad

133. *Ridley Sch. Dist. v. M.R.*, 680 F.3d 260, 264 (3d Cir. 2012).
134. *Id.*
135. *Ridley*, 744 F.3d at 116.
136. *Id.* at 125.
137. *Id.*
138. *Id.* at 125–26.
139. *Ridley Sch. Dist. v. M.R.*, 135 S. Ct. 2309 (2015).

interpretation is correct because it comports with the statute's plain meaning, the legislative intent and history, the DOE's regulations, and Supreme Court precedent. The second portion of this Part examines the financial burden the broad stay-put provision places on school districts and its policy and legal implications. This Part concludes by proposing a legislative amendment that allows for the stay-put provision to apply during the pendency of the dispute in most circumstances, but helps lessen the financial burden on school districts when necessary.

A. The Ridley Court Correctly Adopted the Broad Interpretation of the Stay-Put Provision.

In *M.R. v. Ridley School District*, the Third Circuit was tasked with deciding which interpretation at the heart of a circuit split regarding the stay-put provision it should adopt.[140] After examining the arguments on both sides, the Third Circuit adopted the broad interpretation—that the stay-put provision applies until the dispute is finally resolved, which includes any appeals at the appellate level. The *Ridley* Court correctly interpreted the statute because it comports with the statutory text, the legislative intent and history of IDEA and the stay-put provision, the DOE's regulations interpreting the stay-put provision, and Supreme Court precedent on the stay-put provision and IDEA as a whole.

1. THE *RIDLEY* COURT'S INTERPRETATION IS CORRECT BECAUSE IT COMPORTS WITH THE STATUTORY TEXT

The stay-put provision's text and the surrounding statutes in IDEA indicate that the broad interpretation is correct. The stay-put provision states that "during the pendency of *any proceedings conducted pursuant to this section* . . . the child shall remain in the then-current educational placement of the child . . . ."[141] The "proceedings conducted pursuant to this section" are due process hearings, state administrative reviews, and "civil action[s]" for review brought "in any State court of competent jurisdiction or in a district court of the United States."[142] Any party aggrieved by the findings of a due process or administrative hearing can bring a "civil action."[143]

The scope of the stay-put provision thus depends on the meaning of "civil action." 28 U.S.C. § 1291 provides that circuit courts "shall" have jurisdiction to hear an appeal from a final judgment of a district

140. *Ridley*, 744 F.3d at 125.
141. 20 U.S.C. § 1415(j) (2012) (emphasis added).
142. § 1415(d)(2), -(e)(2), -(j).
143. § 1415(i)(2)(A).

court.[144] When a party brings a civil action in a district court under 20 U.S.C. § 1415(i) and appeals an adverse judgment to the circuit court under 28 U.S.C. § 1291, the "proceeding" did not stop. Instead, the "proceeding" that began with the filing in the district court continued on appeal to the circuit court.[145]

Furthermore, treating an appeal as part of the same "civil action" adjudicated in the district court is consistent with the Supreme Court's usage of that term when describing cases pending before it on writs of certiorari.[146] Additionally, treating an appeal from a district court ruling as part of the same "civil action" also comports with the ordinary meaning of the term "civil action."[147] It would be illogical to say that a civil action has been definitively resolved when a district court's decision in such action is being appealed.[148]

Yet, the D.C. Circuit and other subscribers to the narrow interpretation state that the plain meaning of the stay-put provision and the surrounding statutes make clear that the stay-put provision ceases to apply after the trial court.[149] The D.C. Circuit argued that the stay-put provision applied only during the pendency of due process hearings, state administrative hearings, and civil actions brought in a state or federal trial court.[150] Accordingly, the provision would only apply during the civil action while it is in the state or federal trial court that it was brought in.

The D.C. Circuit also stated that other provisions of IDEA demonstrate that the stay-put provision only applies to the trial court level. The court noted that the only other reference to court proceedings in the section is a provision that authorizes the court in a civil action to

144. 28 U.S.C. § 1291 (2012).

145. *Ridley*, 744 F.3d at 126.

146. *See, e.g.*, *Tolan v. Cotton*, 134 S. Ct. 1861, 1864 n.1 (2014) (per curiam) (referring to a case pending in the Court as "this civil action"); *Ryan v. Gonzales*, 133 S. Ct. 696, 707 (2013) (noting that respondent in the Court "is a state prisoner challenging the basis of his conviction in a federal civil action") (emphasis omitted); *Lewis v. City of Chicago*, 560 U.S. 205, 209 (2010) (referring to case pending in the Court as "this civil action"); *New York Times Co. v. Tasini*, 533 U.S. 483, 491 (2001) (same); *Oklahoma Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 453 (1995) (same); *McLucas v. DeChamplain*, 421 U.S. 21, 30 (1975) (stating that "[t]his [case] is a civil action"); Brief for the United States as Amici Curiae Supporting at 11, *Ridley Sch. Dist. v. M.R.,* 135 S. Ct. 2309 (2015) (No. 13-1547).

147. Brief for the United States as Amici Curiae, *supra* note 147.

148. *Id.*

149. *Andersen ex rel. Andersen v. District of Columbia,* 877 F.2d 1018, 1023 (D.C. Cir. 1989).

150. *Id.*

hear additional evidence.[151] According to the court, this meant that the stay-put provision only applied to the trial court.[152]

The narrow interpretation, however, is a strained textual construction. First, the stay-put provision applies to "*any* proceeding," and the ordinary meaning of a civil action includes an appeal to a circuit court.[153] Moreover, by providing an aggrieved party the right to appeal to the district court, Congress also made it possible for such party to appeal the dispute to the circuit court.[154] Congress, as the legislative drafter, certainly knew that 28 U.S.C. § 1291 provides that circuit courts "shall" have jurisdiction to hear appeals from final judgments of a district court, including final judgments on a dispute brought under 20 U.S.C. § 1415.[155] Nevertheless, even if the textual arguments for the competing interpretations are both reasonable, the purpose of IDEA and its legislative history, the DOE's regulations, and Supreme Court precedent demonstrate that the *Ridley* Court's interpretation is correct.

2. THE *RIDLEY* COURT'S INTERPRETATION IS CORRECT BECAUSE IT COMPORTS WITH THE PURPOSE OF THE STAY-PUT PROVISION, THE PURPOSE OF IDEA AS A WHOLE, AND THE LEGISLATIVE HISTORY

The *Ridley* Court's ruling that the stay-put provision applies until the dispute is resolved, including appeals, best comports with the stay-put provision's purpose and IDEA's legislative purpose and history. First, the ruling is in line with the stay-put provision's purpose.[156] Second, the ruling best effectuates the purpose of IDEA as a whole.[157] Finally, the ruling is consistent with the legislative history discussing the scope of the stay-put provision.[158]

a. The Purpose of the Stay-Put Provision

The *Ridley* Court's ruling that the stay-put provision applies during an appeal fits best with the purpose of the stay-put provision. The stay-put provision's core purpose is "to reduce the chance of a child being

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151. *Id.* (citing 20 U.S.C. § 1415(e)(2), which would later be recodified as 20 U.S.C. § 1415(i)(2)(C) (2012)).

152. *Id.*

153. *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 125–26 (3d Cir. 2014), *cert. denied,* 135 S. Ct. 2309 (2015) (emphasis added).

154. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1038 (9th Cir. 2009).

155. *Ridley*, 744 F.3d 125–26 (quoting 20 U.S.C. § 1415(j) (2012)).

156. *See supra* Part I.C.

157. *See supra* Part I.B.

158. *See supra* Part I.C.

bounced from one school to another, only to have the location changed again by an appellate court."[159] Congress believed the stay-put provision was important because it acts as a "protective measure to prevent disruption of the child's education throughout the dispute process."[160] As the Third Circuit explained, "[t]he provision represents Congress' policy choice that all handicapped children, regardless of whether their case is meritorious or not, are to remain in their current educational placement until the dispute with regard to their placement is ultimately resolved."[161]

Ridley provides an instructive illustration why interpreting the stay-put provision to apply during all appeals best effectuates the purpose of the stay-put provision. Requiring students like Ridley to stay-put while the case is pending in the circuit court, instead of bouncing from the private school to the public school, "reduce[s] the chance of [the] child being bounced from one school to another, only to have the location changed again by an appellate court."[162] Furthermore, requiring students like Ridley to stay-put during the appeal "prevent[s] disruption of the child's education throughout the dispute process."[163]

In contrast, interpreting the provision narrowly to cease applying after a district court renders a decision flouts the provision's purpose. Using the narrow interpretation in *Ridley* would have resulted in the child transferring from the private school to the public school, which would have increased the chance of the child bouncing from one school to another, especially if the appellate court overruled the district court, and disrupted the child's education. Therefore, the stay-put provision's purpose is best effectuated if the provision is interpreted to apply through the entire pendency of the case, including appeals.

b. The Purpose of IDEA

Congress was clear on what their intent was for IDEA as a whole. Congress stated IDEA's purpose was to ensure that all disabled children are provided a FAPE designed to meet the child's unique needs and to ensure that the rights of disabled children and their parents are

159. *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 91 F.3d 689, 695 (5th Cir. 1996).

160. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1040 (9th Cir. 2009).

161. *Drinker ex rel. Drinker v. Colonial Sch. Dist.*, 78 F.3d 859, 864 (3d Cir. 1996).

162. *Flour*, 91 F.3d at 695.

163. *Rocklin*, 559 F.3d at 1040.

protected.[164] Congress's intent is best effectuated by requiring the stay-put provision to apply until the dispute is completely resolved.

Ridley also provides a good example of how interpreting the stay-put provision broadly furthers the purpose of IDEA. In *Ridley*, the parents had a reasonable argument that the school district failed to provide a FAPE, evidenced by the fact the administrative officer ruled in their favor.[165] Thus, the parents had a reasonable argument that their school district was not meeting their child's unique needs and that the private school setting was. Furthermore, because the private school setting arguably met the child's needs while the public school setting arguably did not, the rights of the disabled child and her parents are best protected by allowing the child to stay-put in an arguably appropriate placement of their choice through all appeals.

On the other hand, the narrow interpretation contravenes the purpose of IDEA. If the narrow interpretation applied, once the district court ruled in favor of the school district, the school district would no longer be required to pay for the private school setting. The practical effect that the narrow interpretation would have in the majority of cases would be significant.[166] The parents would likely be forced to remove their child from her current private placement and put her in an arguably inappropriate public placement for the duration of any appeal.[167] Private school is very expensive,[168] and thus in such a situation, only parents with financial means could keep their child in the private placement during an appeal.[169] For parents who are unable to afford a private placement, their child's education will be disrupted

164. 20 U.S.C. § 1400(d)(1)(A)-(B) (2012). Congress's intent to ensure that all disabled children are provided a FAPE designed to meet the child's unique needs and to ensure that the rights of disabled children and their parents are protected has remained unchanged since the enactment of the EACHA in 1975. *Compare id.*(stating that the purposes of IDEA are, inter alia, "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living" and "to ensure that the rights of children with disabilities and parents of such children are protected"), *with* Pub L. No. 94-142, § 3, 89 Stat 773 (1975) (stating that "[i]t is the purpose of [EACHA] to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs, to assure that the rights of handicapped children and their parents or guardians are protected . . . .").

165. *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 116, 119 (3d Cir. 2014), *cert denied*, 135 S. Ct. 2309 (2015).

166. *N. Kitsap Sch. Dist. v. K.W. ex rel. C.W.*, 123 P.3d 469, 482–83 (Wash. Ct. App. 2005).

167. *Id.* at 374.

168. Greene & Winters, *supra* note 3, at 69–70. *See infra* Part II.B.1. for an analysis and examples of how expensive private school is compared to public school.

169. *N. Kitsap Sch. Dist.*, 123 P.3d 469 at 483.

again and their "opportunity to successfully advocate for their child [will be] foreclosed or significantly curtailed."[170] It cannot be said that disrupting a child's education and curtailing a parent's opportunity to advocate for their child meets the disabled child's unique needs and ensures that the rights of disabled children and their parents are protected.

Indeed, if parents wanted to keep their child in a private school after an unfavorable district court ruling, they could still bring a claim for reimbursement after a favorable decision by the appellate court. However, the purpose of IDEA, which is to ensure that every child receive a "free and appropriate education" is not effectuated by requiring parents, who obtained a favorable ruling from an administrative officer, to front the funds for continued private education.[171] A possibility of "reimbursement at the end of the litigation turnpike is of little consolation to a parent who cannot pay the toll at the outset."[172]

c. Legislative History

The broad interpretation also comports with the legislative history of the stay-put provision, as articulated by the bill's sponsor. A court may look to legislative history to interpret a statute's meaning.[173] When interpreting a statute, the court may give weight to the bill's sponsor's comments regarding the purpose of the particular statute.[174]

The legislative history regarding the stay-put provision is revealing. For example, comments by Senator Harrison Williams, a

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170. *Id.*

171. *Susquenita Sch. Dist. v. Raelee S. ex rel. Heidi S.*, 96 F.3d 78, 86–87 (3d Cir. 1996).

172. *Id.* at 87.

173. *See, e.g.*, *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553 (2014) (using legislative history to interpret the scope of a removal statute); *United States v. R.L.C.*, 503 U.S. 291, 298–305 (1992) (examining legislative history to interpret a sentencing statute). Some judges and scholars argue that courts should not be analyzing legislative history when interpreting a statute. *See Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (stating that the use of legislative history is illegitimate and comparing it to "entering a crowded cocktail party and looking over the heads of the guests for one's friends"); John F. Manning, *Textualism as a Nondelegation Doctrine*, 97 COLUM. L. REV. 673, 706–31 (1997) (using the Constitution's structure to argue that legislative history should not be authoritative); Aaron-Andrew P. Bruhl, *Hierarchy and Heterogeneity: How to Read A Statute in A Lower Court*, 97 CORNELL L. REV. 433 (2012) (arguing that whether a court should analyze legislative history depends on the institutional circumstances and resources of the interpreting court).

174. *Nat'l Woodwork Mfrs. Ass'n v. NLRB*, 386 U.S. 612, 640 (1967); *Schwegmann Bros. v. Calvert Distillers Corp.*, 341 U.S. 384, 394–95 (1951).

sponsor and one of the principal authors of EAHCA,[175] made during the debate on whether to pass EAHCA sheds light on the intended scope of the stay-put provision. Senator Williams stated that the stay-put provision would apply "during the pendency of *any* administrative or *judicial proceedings* regarding a complaint."[176] To interpret the stay-put provision narrowly to cease applying once the district court renders a decision contradicts Senator Williams' statements because an appeal to the district court is still a proceeding regarding a complaint about the child's placement. Therefore, the purpose of the stay-put provision, the purpose of IDEA itself, and the legislative history regarding the scope of the stay-put provision demonstrate that the *Ridley* Court correctly interpreted the statute.

3. THE *RIDLEY* COURT'S INTERPRETATION IS CORRECT BECAUSE IT COMPORTS WITH THE DEPARTMENT OF EDUCATION'S REGULATION ON THE STAY-PUT PROVISION

The DOE's regulation interpreting the stay-put provision demonstrates that the *Ridley* court correctly adopted the broad interpretation. Congress delegated authority to the DOE to enforce IDEA and promulgate rules to interpret its provisions.[177] Pursuant to such authority, the DOE promulgated regulations that specify the process for challenging the provision of a FAPE.[178] Under the DOE's regulations, a "due process complaint notice requesting a due process hearing"[179] is the formal mechanism whereby a parent or school district challenges the child's educational placement or the provision of a FAPE to the child.[180] Further, aggrieved parties have the right to appeal.[181] Tracking Senator Williams' comments made before the passage of EAHCA,[182] The DOE's regulation states that the stay-put provision applies "during the pendency of *any* administrative or *judicial proceeding* regarding a due process complaint notice requesting a due process hearing . . . ."[183]

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175. *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018, 1023 (D.C. Cir. 1989) (observing that Senator Williams was a sponsor of EAHCA); WEBER, *supra* note 28, § 1.3(2) (noting that Senator Williams was the "principal drafter" of EAHCA).

176. 121 CONG. REC. 37,416 (1975) (emphasis added).

177. 20 U.S.C. § 1406 (2012).

178. 34 C.F.R. §§ 300.501–.521 (2015).

179. 34 C.F.R. § 300.518(a).

180. § 300.507(a)(1).

181. § 300.514(a).

182. *See supra* Part II.A.2.c.

183. § 300.518(a) (emphasis added).

The regulation's meaning is that the stay-put provision applies during all judicial appeals. First, an appeal to the circuit court regarding a district court ruling on a due process hearing is precisely a "judicial proceeding regarding a due process complaint notice requesting a due process hearing."[184] Thus, the regulation's plain meaning requires a broad interpretation.

Second, the DOE has long made clear that the regulation's meaning is that the stay-put provision applies during all appeals. For example, the DOE has written opinion letters as far back as 1992 that states that the stay-put provision applies while any judicial appeal is pending.[185] Additionally, the DOE restated its position that the stay-put regulation governs a child's placement during any judicial appeals in its comments amending the regulation in 1999.[186] Furthermore, during notice and comment regarding the regulation in 2006, one commenter proposed amending the regulation to invalidate the stay-put agreement if the administrative officer's decision is reversed by the district court,[187] essentially asking the DOE to adopt the D.C. Circuit's holding in *Andersen*. The DOE rejected the proposal, stating that the purpose of the provision was to apply during any subsequent judicial appeals, including an appeal to the circuit court.[188] Finally, when the school district appealed the *Ridley* court's decision to the Supreme Court, the DOE explicitly endorsed and advocated for the *Ridley* court's interpretation in an amicus brief.[189]

The DOE's interpretation should control under the *Chevron* doctrine. The *Chevron* doctrine applies where (1) the court is interpreting a statute that Congress delegated authority to the agency to make rules carrying the force of law, and (2) the agency interpretation claiming deference was promulgated in the exercise of that authority.[190] Under the *Chevron* doctrine, the first step is for the court to ask whether the statute's plain meaning is clear.[191] If the statute's plain meaning is clear, then the court "must give effect to the unambiguously expressed intent of Congress."[192] If the statute's meaning is ambiguous, then the next step is for the court to analyze the agency's

184. *Id.*

185. Brief for the United States as Amicus Curiae, *supra* note 147, at 11.

186. 64 Fed. Reg. 12,615 (Mar. 12, 1999) (stating that once a hearing officer renders a decision on the child's placement at a due process hearing, the stay-put provision applies "during subsequent appeals").

187. Brief for the United States as Amicus Curiae, *supra* note 147, at 14.

188. *Id.* at 14–15.

189. *Id.* at 11. The Supreme Court denied the school district's writ of certiorari. *Ridley Sch. Dist. v. M.R.*, 135 S. Ct. 2309 (2015).

190. *United States v. Mead Corp.*, 533 U.S. 218, 226–27 (2001).

191. *Chevron v. Nat. Res. Def. Council*, 467 U.S. 837, 842 (1984).

192. *Id.* at 843.

interpretation.[193] The court will uphold the agency's interpretation so long as it is a reasonable construction of the statute.[194] In the latter analysis, agencies are accorded great deference.[195]

The *Chevron* doctrine applies in this case. Congress delegated power to the DOE to promulgate rules with the force of law interpreting the stay-put provision.[196] Furthermore, the stay-put regulation was promulgated in the exercise of Congress's delegation of rulemaking authority.[197]

The DOE's interpretation controls the meaning of the stay-put provision under *Chevron*. This Note argues that the stay-put provision's meaning is clear.[198] But assuming the statute is ambiguous, the DOE's interpretation should control because it is reasonable. It is reasonable because, as discussed above, interpreting the stay-put provision to apply during all judicial appeals is a natural reading of the statute.[199] The DOE's interpretation would easily be upheld under the great degree of deference afforded to agencies under the *Chevron* doctrine. Therefore, the *Ridley* court was correct in adopting the broad interpretation because the interpretation fits with the DOE's regulations pertaining to the stay-put provision.

4. THE *RIDLEY* COURT'S INTERPRETATION IS CORRECT BECAUSE IT COMPORTS WITH UNITED STATES SUPREME COURT PRECEDENT ON THE STAY-PUT PROVISION

The broad interpretation fits best with the two Supreme Court cases that decided the meaning of the stay-put provision. First, the broad interpretation comports with the Supreme Court's decision and

193. *Id.*

194. *Id.* at 844.

195. *E.g.*, *Gonzales v. Oregon*, 546 U.S. 243, 255 (2006) (stating that an agency is given "substantial deference" when the court is reviewing the agency's interpretation of an ambiguous statute); *Rust v. Sullivan*, 500 U.S. 173, 184 (1991) (holding that "substantial deference is accorded to the interpretation of the authorizing statute by the agency authorized with administering it"); *see Smiley v. Citibank*, 517 U.S. 735, 740–41 (1996) (noting that courts accord agencies deference under *Chevron* because of a "presumption that Congress, when it left ambiguity in a statute meant for implementation by an agency, understood that the ambiguity would be resolved, first and foremost, by the agency, and desired the agency (rather than the courts) to possess whatever degree of discretion the ambiguity allows"); *Pauley v. BethEnergy Mines, Inc.*, 501 U.S. 680, 696 (1991) (stating that "deference to an agency's interpretation of ambiguous provisions of the statutes it is authorized to implement reflects a sensitivity to the proper roles of the political and judicial branches").

196. 20 U.S.C. § 1406 (2012).

197. 34 C.F.R. § 300.518 (2015).

198. *See supra* Part II.A.1.

199. *See supra* Part II.A.1.

reasoning in *School Committee of the Town of Burlington, Massachusetts v. Department of Education of Massachusetts*.[200] Second, *Honig v. Doe*[201] is inapplicable to the interpretation of the stay-put provision's scope and therefore cannot be used to justify the narrow interpretation.

a. The Broad Interpretation is Consistent with Town of Burlington

The *Ridley* court's interpretation is consistent with the reasoning in *Town of Burlington*. First, as stated above,[202] the *Ridley* court's interpretation comports with the purpose of IDEA, which the *Town of Burlington* court relied on to hold that a parent does not waive his or her child's right to the stay-put provision where the parent unilaterally takes his or her child out of the current placement while a challenge is pending at the administrative level.[203] Second, interpreting the stay-put provision broadly does not defeat either of IDEA's objectives that the Court cited in *Town of Burlington*: to give disabled children "both an appropriate education and a free one . . . ."[204] A reasonable dispute about what placement is appropriate remains in a situation where, as in *Ridley*, the administrative officer deemed the private school appropriate but the district court deemed the public school appropriate. In such a situation, an appeal to the circuit court will resolve the question of which placement is truly appropriate. An appellate decision on the matter furthers the objective of IDEA: placing the child in the true appropriate setting. The broad interpretation would incentivize the parent to appeal because the parents who cannot afford private education are not faced with the decision of removing their child from her current private placement and putting her in an arguably inappropriate setting for the duration of an appeal.[205]

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200. *See supra* Part I.D.1 (discussing the facts and holding in *Town of Burlington*).

201. *See supra* Part I.D.2 (discussing the facts and holding in *Honig*).

202. *See supra* Part II.A.2.c.

203. The *Town of Burlington* Court relied on the purpose of EAHCA (to provide a FAPE designed to meet the child's unique needs) and that language remains unchanged in IDEA today. *Compare* Pub. L. No. 94-142, § 3, 89 Stat. 773 (1975) ("It is the purpose of this Act to assure that all handicapped children have available to them . . . a free appropriate public education which emphasizes special education and related services designed to meet their unique needs . . . ."), *with* 20 U.S.C. § 1400(d)(1)(A)–(B) (2012) ("The purposes of this chapter are . . . to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs . . . .").

204. *Sch. Comm. of Town of Burlington v. Dep't of Educ. of Mass.*, 471 U.S. 359, 372 (1985).

205. *N. Kitsap Sch. Dist. v. K.W. ex rel. C.W.*, 123 P.3d 469, 483 (Wash. Ct. App. 2005).

On the other hand, the narrow interpretation causes parents to face the above predicament, which could chill any desire to appeal and thereby prevent at least some children from being placed in a truly appropriate setting. Because interpreting the stay-put provision narrowly would prevent some children from being placed in an appropriate setting, the narrow interpretation defeats one of IDEA's objectives, as declared by *Town of Burlington*. Therefore, unlike the narrow interpretation, the broad interpretation is consistent with *Town of Burlington* because it does not construe the stay-put provision to defeat the objectives of providing a disabled child "both an appropriate education and a free one . . . ."[206]

b. Honig *is Inapplicable to the Circuit Split*

In *Andersen*, the D.C. Circuit erroneously relied on *Honig* because *Honig* is irrelevant to the scope of the stay-put provision. First, as the Ninth Circuit pointed out, the *Honig* case is inapposite to the issue at the heart of the circuit split because *Honig* pertained to an exigency exception to the stay-put provision.[207] Moreover, the exigency exception *Honig* created was superseded by statute.[208]

Second, the *Andersen* court incorrectly reads *Honig* as stating that the prevention of "unilateral displacement by school authorities" is the *only* purpose of the stay-put provision.[209] In fact, *Honig* stated that the prevention of unilateral displacement by school authorities was just "*one of the purposes* of [the stay-put provision] . . . ."[210] As *Town of Burlington* demonstrates, another purpose of the stay-put provision was to further IDEA's overall goal to provide "a free appropriate public

206. *Town of Burlington*, 471 U.S. at 372.

207. *Joshua A. ex rel. Jorge A. v. Rocklin Unified Sch. Dist.*, 559 F.3d 1036, 1038 (9th Cir. 2009).

208. *Honig* was partially superseded by statute in the 1997 amendments to the IDEA. *Id.* at 1039 n.1. As discussed, *Honig* added an exigency circumstances exception to the stay-put provision that a reviewing body may change a child's placement upon a showing the child's placement is substantially likely to result in injury to the child or others. *Honig v. Doe*, 484 U.S. 305, 328 (1988). The 1997 amendments rewrote the exigency circumstances exception created by *Honig*, stating that a school official may remove a child from his placement, notwithstanding the stay-put provision, if the child "carri[ed] or possess[ed a] weapon, knowingly possess[ed], us[ed] or s[old] controlled substances; or caus[ed] serious bodily injury to others." *Rocklin*, 559 F.3d at 1039 n.1. Under the amendment, school districts no longer had to, as they did under *Honig*, first appeal such changes to the courts. *Id.* at 1038.

209. *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 127 (3d Cir. 2014), *cert. denied*, 135 S. Ct. 2309 (2015) (emphasis omitted) (quoting *Andersen ex rel. Andersen v. District of Columbia*, 877 F.2d 1018, 1024 (D.C. Cir. 1989), *cert denied*, 135 S. Ct. 2309 (2015)).

210. *Honig*, 484 U.S. at 327.

education . . . designed to meet [the child's] unique needs."[211] As mentioned above, the broad interpretation is consistent with the latter purpose. Thus, *Honig* is not relevant to the scope of the stay-put provision and therefore the *Ridley* Court's holding that the stay-put provision applies during an appeal to the circuit court is consistent with Supreme Court precedent on the stay-put provision.

B. A Workable Interpretation?

While this Note argues that the *Ridley* Court's interpretation is correct, it concedes that such an interpretation can burden school districts that already face financial insolvency. First, this Part provides a brief overview of the cost of funding a child's private school placement versus a public school placement and the financial implications of the difference in cost between private and public placements.[212] Second, this Part proposes a solution that balances the child's interest in a stable education placement with the school district's financial capabilities in situations where the stay-put provision requires the child to remain in an expensive private placement that the school district will struggle to fund during a long appellate process.[213]

1. THE FINANCIAL IMPLICATIONS OF THE *RIDLEY* COURT'S INTERPRETATION

While the *Ridley* Court's interpretation is correct from a legal perspective, it can significantly burden financially constrained school districts. The average cost to finance a disabled child in a public school is $15,117.[214] However, the average cost to finance a disabled child's private placement is $25,580, which is $10,463 more per year compared to the cost of educating the child in a public school.[215] Sometimes, funding the private placement costs the school district significantly more than a public placement. For example, in *Forest Grove School District v. T.A.*,[216] the tuition of the child's private school

211. *Town of Burlington*, 471 U.S. at 369.

212. *See supra* Part II.B.1.

213. *See supra* Part II.B.2.

214. Greene & Winters, *supra* note 3, at 69. Furthermore, IDEA as a whole is an underfunded mandate and is very costly for school districts. *See* Megan Roberts, *The Individuals with Disabilities Education Act: Why Considering Individuals One at A Time Creates Untenable Situations for Students and Educators*, 55 UCLA L. REV. 1041, 1075 (2008).

215. Greene & Winters, *supra* note 3, at 69.

216. 675 F. Supp. 2d 1063 (D. Or. 2009), *aff'd*, 638 F.3d 1234 (9th Cir. 2011).

placement was $5,200 per month.[217] Assuming a nine-month school year, the school district had to pay $46,800 per year to finance the child's private placement tuition alone, not even factoring in transportation costs.

Additionally, the school district's litigation costs can be substantial. The average cost to a school district to litigate a due process complaint is about $8,000 to $12,000 per hearing.[218] Of course, the litigation costs grow significantly if the case is appealed up the judicial hierarchy. Moreover, the school district has to pay the parents' reasonable attorney fees if the parents win,[219] which can amount to tens of thousands of dollars.[220] Furthermore, a school district can recover reasonable attorney fees only if the parents' claim was frivolous or if "the [] complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation."[221] Thus, school districts often spend substantial amounts of money by the time a placement dispute is ultimately resolved.

Using the *Ridley* Court's holding in the hypothetical posed in the introduction of this Note is instructive. In that hypothetical, once the district court rendered a decision the school district would still have to pay for the child's private school tuition, which was $46,800 per year plus transportation costs. If the case took place in the Ninth Circuit, where the average time between the filing of a notice of appeal of a district court decision to the circuit court issuing a decision is about thirteen months,[222] then the school district would be required to pay at least $46,800 more than it would have to pay under the narrow interpretation, even though the circuit court might ultimately agree that the public school placement was appropriate all along. Furthermore, if the case is then appealed to the Supreme Court, the school district would be required to fund the private placement until the Court denies the writ of certiorari or renders a decision in the unlikely event it grants the writ.

2. A POSSIBLE SOLUTION

This Note proposes a legislative amendment to IDEA. The amendment would create a special circumstances exception to the stay-

217. *Id.* at 1068.

218. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 59 (2005).

219. 20 U.S.C. § 1415(i)(3)(B)(i)(I) (2012).

220. *See Park Hill Sch. Dist. v. Dass*, 655 F.3d 762, 764 (8th Cir. 2011) (noting that the district court awarded the prevailing parents $25,000 in attorney fees).

221. § 1415(i)(3)(B)(i).

222. U.S. COURTS, *supra* note 14.

put provision in instances where the case is pending at the appellate level and the school district would face undue financial hardship if it had to continue to fund the private placement through the appellate process. First, however, it is important to briefly discuss why the Supreme Court likely would not read such a special circumstances exception into the stay-put provision.

Florence County School District Four v. Carter ex rel. Carter[223] demonstrates that the Court would likely not be persuaded by a policy argument centered around the financial burden on school districts.[224] In *Florence*, parents sought reimbursement for the cost of private placement of their disabled child.[225] The district court found that the public school's proposed IEP was inadequate and that private placement was appropriate, and ordered reimbursement.[226] The school district appealed, arguing that allowing reimbursement for private placement "puts an unreasonable burden on financially strapped local educational authorities."[227] Specifically, the school district argued that requiring parents to choose a state-approved private school "is the only meaningful way to allow States to control costs; otherwise States will have to reimburse dissatisfied parents for any private school that provides an education that is proper under the Act, no matter how expensive it may be."[228]

In a unanimous opinion, the Court rejected this argument. The Court stated that:

> [t]here is no doubt that Congress has imposed a significant financial burden on States and school districts that participate in IDEA. Yet public educational authorities who want to avoid reimbursing parents for the private education of a disabled child can do one of two things: give the child a free appropriate public education in a public setting, or place the child in an appropriate private setting of the State's choice. This is IDEA's mandate, and school officials who conform to it need not worry about reimbursement claims.[229]

While *Florence* did not concern the stay-put provision, it did involve the related issue of whether parents are entitled to reimbursement for private school tuition when the private placement

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223. 510 U.S. 7 (1993).
224. *Id.* at 15.
225. *Id.* at 10.
226. *Id.* at 10–11.
227. *Id.* at 15.
228. *Id.*
229. *Id.*

was later found to be appropriate. Thus, the Court would not be bound to the decision in the context of the stay-put provision. Moreover, in *Florence*, the school's IEP was ultimately found to be inappropriate, whereas with the stay-put provision, the appellate court could rule the school district's proposal was right all along and the school district would still have to pay for the private school.

Nevertheless, despite these differences, the Court's reasoning above applies equally to the stay-put provision. In *Florence*, the Court gave no weight to the financial burden argument because the school district could avoid having to pay for an expensive private placement if it "[gave] the child a free appropriate public education in a public setting, or place[d] the child in an appropriate private setting of the State's choice" in the first place.[230] Similarly, in the context of the stay-put provision, the school district could avoid the burden of funding a child's private placement through any appellate appeals if it provided the child a FAPE in a public setting or placed the child in an appropriate private setting of the State's choice in the first place. If the Court was faced with a policy argument centered around the financial burdens of a broad reading of the stay-put provision, it would likely point to the language in *Florence* and hold that providing a FAPE "is IDEA's mandate, and school officials who conform to it need not worry . . ."[231] about the financial burdens of the stay-put provision.

However, while a Supreme Court decision likely could not address the problem, a legislative amendment to the stay-put provision could. Such an amendment could account for the instances where a placement dispute is pending at the appellate level and the school district would face undue financial hardship if it had to continue to fund the private placement through the appellate process. To this end, this Note proposes a special circumstances exception that strikes a balance between the child's interest in receiving a FAPE and a stable educational environment on one hand, and the school district's ability to fund the placement while the dispute is pending on the other hand.

The proposal would allow, in the event that a party appeals a district court decision to the appellate court, for school districts to move for a preliminary injunction requiring the child to be placed in the public school placement. The amendment would abandon the automatic injunction-like nature of the stay-put provision[232] upon an appeal to the circuit court and replace it with a traditional preliminary injunction standard.[233] Specifically, the amendment would allow a circuit court discretion to order the child to be placed in a public school instead of a

230. *Id*.
231. *Id*.
232. *See supra* text accompanying note 59.
233. *See supra* text accompanying note 60.

private school if the school district could show (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of an injunction; (3) that the balance of equities tips in its favor; and (4) an injunction is in the public interest.[234]

In practice, the school district could satisfy the first element by showing that the court will likely find that the public school placement is appropriate. The school district could satisfy the second element by proving it would suffer undue financial hardship if it had to continue funding the private placement during the appeals process. For the third element, the school district would be required to demonstrate that preventing the undue financial hardship it is experiencing outweighs the threat of creating instability for the child by changing his or her placement. The school district could satisfy the final element by showing that allowing the child to remain in the private placement during the appeal would divert funds away from the district to an extent that it would adversely impact the district's ability to provide an education to children within the district.

The proposed special circumstances exception would be consistent with IDEA's purpose. One of the purposes of IDEA is "to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities."[235] Requiring a significantly burdened school district to pay for an expensive private school while the long appeals process takes place has the potential to threaten the school district's ability to fund and provide for the education of other disabled children in the district. The proposed special circumstances exception would provide a tool for school districts to avoid such circumstances, thereby assisting the state and localities with providing for the education of all children with disabilities.

The proposed special circumstances exception would not be the first exception to the stay-put provision. As discussed above, the 1997 amendments to IDEA created an exigency exception that allows school officials to pull a child out of her placement if the child poses a threat to her classmates.[236] Like the 1997 amendment, the proposed amendment would be addressing an important concern while remaining consistent with IDEA's purposes.

CONCLUSION

When the Third Circuit heard the case *M.R. v. Ridley School District* in 2014, it had to decide the scope of the stay-put provision.

234. *See supra* text accompanying note 60.

235. 20 U.S.C. § 1400(d)(1)(C) (2012).

236. *See supra* note 191 and accompanying text.

Two of its sister circuits had already handed down differing holdings on the issue. On one hand, the D.C. Circuit held that the provision ceases to apply after a district court renders a decision on the child's appropriate placement. On the other hand, the Ninth Circuit held that the stay-put provision applies so long as the dispute is pending, including appeals from the district court to the circuit court. In *Ridley*, the Third Circuit rejected the D.C. Circuit's holding and agreed with the Ninth Circuit.

The *Ridley* Court correctly interpreted the stay-put provision. First, the interpretation comports with the plain meaning of the statute. Second, the interpretation is consistent with the purpose of the stay-put provision, the purpose of IDEA, and the intended scope of the provision as stated in the legislative history. Third, the interpretation aligns with the DOE's regulation on the stay-put provision. Finally, the interpretation is consistent with Supreme Court precedent.

However, the *Ridley* Court's interpretation will impose a financial burden on school districts. Such financial burden is an "unavoidable consequence of the balance Congress struck to ensure stability for a vulnerable group of children."[237] Yet, Congress should reassess the balance it struck to address instances where requiring a school district to continue funding a private placement during an appeal to the circuit court would impose too great of a financial burden on the school district. Amending IDEA to allow school districts, following a district court decision, to motion for a preliminary injunction in circuit court requesting the child be moved to the public placement would be a constructive solution to address the financial implications of the stay-put provision. The amendment would strike a common sense balance between alleviating the school district's financial burden and retaining the stay-put provision's goal of safeguarding a stable educational environment for the child.

Until Congress amends the stay-put provision, the provision's scope will continue to be determined by the courts. If and when the scope of the stay-put provision is decided in other circuit courts, it is imperative that the provision be interpreted broadly. It is easy to forget that just forty years ago, there were no federal civil rights laws guaranteeing education for disabled children.[238] Until the 1970s, millions of disabled children lacked education and their parents were often helpless as school districts turned a blind eye.[239] Interpreting the

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237. *M.R. v. Ridley Sch. Dist.*, 744 F.3d 112, 128 (3d Cir. 2014), *cert. denied*, 135 S. Ct. 2309 (2015).

238. *See supra* Part I.A. for discussion of the lack of special education law prior to the 1960s.

239. *See supra* Part I.A.

stay-put provision broadly to apply during all appeals would benefit disabled children and their parents, thus conforming to the spirit of the struggle to secure education for disabled children.