UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MR. AND MRS. G. AND J.G. BY AND THROUGH HIS PARENTS AND NEXT FRIENDS, MR. AND MRS. G	:	
Plaintiffs,	:	NO. 3:04cv1653 (MRK)
v.	:	
TRUMBULL, CONNECTICUT BOARD OF EDUCATION, ET AL.	:	
Defendants.	:	

MEMORANDUM OF DECISION

Currently pending before the Court is Plaintiffs' Motion for Attorney's Fees [**doc. #32**]. The Court DENIES Plaintiffs' Motion because the Court concludes that Plaintiffs are not "prevailing part[ies]" within the meaning of the Individuals with Disabilities Education Act ("IDEA "), 20 U.S.C. § 1415(i)(3)(B).

I.

Plaintiffs in this action are the parents of an eight-year-old boy with autism (known in this action as "J.G."), and they reside with their son in Shelton, Connecticut. Pls.' Mem. in Supp. of Atty's Fees [doc. #33] at 2. For approximately five years, the Defendant Shelton Board of Education ("Shelton") had placed J.G., on a tuition basis, in an autism program called SMILE that was administered by the Defendant Trumbull Board of Education ("Trumbull"). *Id*. In the spring of 2004, Trumbull decided that it would no longer accept non-resident, tuition-based students into its SMILE program for the 2004-2005 school year and into the foreseeable future.

In May 2004, Shelton offered J.G. placement for the 2004-2005 school year at the Mohegan School within the Shelton school district. Plaintiffs opposed Shelton's proposal for their son's educational placement and they initiated administrative proceedings to challenge the decision on the ground that the program offered by Shelton would not provide J.G. with a "free appropriate public education" in compliance with IDEA. *See* 20 U.S.C. § 1400(c)(3). Plaintiffs also sought a so-called "stay put" order under IDEA to allow their son to remain in Trumbull's SMILE program during the pendency of the administrative proceedings. *Id*. The stay put provision of IDEA provides in relevant part as follows:

> [D]uring 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 such child . . ."

20 U.S.C. § 1415(j); *Lillbask v. Conn. Dep't of Educ.*, No. 03-724, 2005 WL 237199, – F.3d –, slip. op. at 8243-44 (2d Cir. Feb. 2, 2005) (same).

On September 6, 2004, after holding a pre-hearing conference and after the parties had filed briefs and other submissions, Hearing Officer Mary Elizabeth Oppenheim issued an Interim Ruling On Motion for Stay Put. That Interim Ruling, which did not address the merits of any issues, scheduled a hearing on Plaintiffs' stay put motion for September 21, and ordered Shelton to maintain J.G.'s placement in Trumbull's SMILE program pending that hearing. Trumbull's Mem. in Opp. [doc. #40] at 2; Interim Ruling on Motion For Stay Put, Ex. B to Compl. [doc. #1]. The Hearing Officer held the stay put hearing on September 21, at which time she gave the parties until October 7 to file additional submissions. The Hearing Officer also continued her interim stay put order in effect pending her ruling on the issues.

Two days later, on September 23, Trumbull sent a letter to Shelton, with a copy to the

Plaintiffs, in which Trumbull stated that it understood that Shelton was under an interim stay put order and that although Trumbull had been willing to accommodate Shelton and Plaintiffs temporarily so that they could work out their differences, Trumbull had "reached the point where it is no longer possible for us to provide this temporary accommodation, which is now being provided at the expense of Trumbull students who need the program." Letter of 9/23/04, Ex. C to Compl. [doc. #1]. The letter advised Shelton and Plaintiffs that effective October 4, 2004, Trumbull would no longer permit J.G. to attend the SMILE program and that alternate arrangements should be made for J.G.'s education. *Id.* On September 26, Trumbull filed a Motion to Dismiss Plaintiffs' administrative action as to Trumbull on the grounds that the Hearing Officer lacked jurisdiction over Trumbull. *See* Trumbull's Mem. in Opp'n to Pl.'s Mot. for Atty's Fees [doc. #40] at 2.

On October 1, 2004, Plaintiffs filed this action in federal court against Trumbull, Shelton and the State Department of Education ("DOE"). Compl. [doc. # 1]. Plaintiffs sought a temporary restraining order ("TRO") and an injunction ordering Trumbull to refrain from excluding J.G. from the SMILE program, ordering Shelton to assume the costs of maintaining J.G. in his current educational placement and/or, in the alternative, ordering the DOE to enforce the Hearing Officer's Interim Stay Put Order. *Id.* Judge Peter C. Dorsey held a hearing on the TRO application on the afternoon of October 1 and entered a TRO requiring J.G. to be permitted to stay in the Trumbull program. *See* Order [doc. #6]. On October 11, 2004, the Hearing Officer issued a Ruling on Motion for Stay Put, confirming her interim order that J.G. should remain in the SMILE Program pending the outcome of the administrative process. See Ruling on Motion for Stay Put, Ex. H to Pls.' Mot. for Attny's Fees [doc. #32]

On October 12, 2004, the Court held a telephonic status conference with the parties in which Trumbull agreed to abide by the Hearing Officer's Ruling and to allow J.G. to remain in the SMILE Program pending the outcome of the administrative proceedings. As a consequence, the Court denied the Motion to Extend Temporary Restraining Order [doc. # 9] and Motion for Preliminary Injunction [doc. # 4] as moot and dissolved the TRO. *See* Order [doc. # 14].

On December 13, 2004, the Hearing Officer issued a Final Decision and Order ("Final Decision"). *See* Final Decision and Order, attached to Shelton's Notice of Filing of Supp. Ex. [doc. #42]. The Final Decision reaffirmed that Trumbull had been bound by the stay put order. It also noted that the Hearing Officer had concluded to grant in part and deny in part Trumbull's motion to dismiss because the Hearing Officer had concluded that she had jurisdiction over Trumbull for purposes of the stay put order but that she lacked jurisdiction to order Trumbull to continue J.G. in the SMILE program at the conclusion of the case since Trumbull had decided to terminate its tuition-based program. The Hearing Officer also concluded that Shelton's educational program would provide J.G. with a free appropriate educational requirements of IDEA and rejected Plaintiffs' claims that J.G. should be placed in a program requested by J.G.'s parents. Finally, the Hearing Officer dissolved her stay put order.

II.

The only issue remaining in this case is Plaintiffs' request under § 1415(i)(3)(B) of the IDEA for an award of $25,681.55 in legal fees incurred to obtain the stay put order from the Hearing Officer and the TRO from this Court. Section 1415(i)(3)(B) provides:

> In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is a prevailing party.

15 U.S.C. § 1415(i)(3)(B). Plaintiffs argue that they are "prevailing part[ies]" under relevant Supreme Court and Second Circuit case law because they "succeeded completely in obtaining the relief sought on the stay put issues raised at the hearing below and in this Court." Pls.' Mem. [doc. #33] at 6. The Court disagrees. Plaintiffs are not prevailing parties within the meaning of relevant case law because they did not obtain a decision on the merits and did not achieve a change in the legal relationship between the parties.

Buckhannon Bd. & Care Home, Inc. v. West Virginia Dep't of Health & Human Res., 532 U.S. 598 (2001), is the leading Supreme Court decision discussing the meaning of the term "prevailing party" in federal legislation authorizing the award of attorneys' fees. There, the Court rejected the "catalyst theory," which posited that a plaintiff is a "prevailing party" if a lawsuit achieves its desired result by bringing about a voluntary change in the defendant's conduct. The Court rejected the catalyst theory because "[i]t allows an award where there is no judicially sanctioned change in the legal relationship of the parties." *Id.* at 605. Its precedents, the Court stated, "counsel[led] against holding that the term 'prevailing party' authorizes an award of attorneys' fees *without* a corresponding alteration in the legal relationship of the parties." *Id.* at 605. And in a comment that has particular resonance in this case, the Court noted that "an interlocutory ruling . . . 'is not the stuff of which legal victories are made.' " *Id.* (quoting *Hewitt v. Helms*, 482 U.S. 755, 760 (2d Cir. 1987).

The Second Circuit has held that *Buckhannon*'s definition of "prevailing party" applies to fees request under the IDEA. *See J.C. Regional School Dist. No. 10*, 278 F.3d 119, 123 (2d Cir. 2002). In *J.C.,* the court held that although a student had obtained all the relief he had sought under IDEA when a planning and placement team had terminated expulsion proceedings and

adopted the individualized educational plan he had requested, the student was not a "prevailing party" under *Buckhanon* because he had not obtained a *judicially sanctioned* change in legal relationship. Acknowledging that the IEP had changed the legal relationship between the parties, the court nonetheless held that the change arose "from the IDEA's statutory mandate and [was] not part of a judicial remedy" and because that change was not "judicially sanctioned," it did not satisfy the requirements of *Buckhannon Id.* at 125. More recent decisions of the Second Circuit have similarly emphasized that the term "prevailing party" requires a change in the parties' legal relationship that "carries with it sufficient judicial imprimatur." *Roberson v. Guiliani,* 346 F.3d 75, 81 (2d Cir. 2002); *see Torres v. Walker,* 356 F.3d 238, 244-45 (2d Cir. 2004).

A.

Turning first to Plaintiffs' claim for fees in obtaining the TRO from Judge Dorsey, the Court has little difficulty concluding that they are not prevailing parties within the meaning of IDEA. In obtaining the TRO, Plaintiffs did not achieve any victory on the merits of their claims – even their stay put claims. Instead, all Judge Dorsey did was order the maintenance of the status quo for a period of 10 days without in any way ruling on, or even addressing, the merits of the parties' claims. *See* Pls.' Mot. to Extend TRO [doc. #9] at 1 ("The TRO was entered by Judge Dorsey . . . to preserve the status quo. . . until such time as Plaintiff's Motion for a Preliminary Injunction is heard and decided."). Thus, the TRO, which was merely in existence for about 10 days, did not change the legal relationship among the parties, as *Buckhannon* requires. To the contrary, the TRO was intended to ensure that for a brief period of time the legal relationship among the parties remained unchanged.

To paraphrase the Supreme Court, a 10-day TRO is simply "not the stuff of which legal

victories are made." *Buckhannon*, 532 U.S. at 605 (internal quotation and citation omitted). Indeed, in *Christopher P. v. Norma P.*, 915 F.2d 724 (2d Cir. 1990), the Second Circuit spoke directly to the situation presented by this case. In that case, the court stated that the "procurement of a TRO in which the court does not address the merits of the case but simply preserves the status quo to avoid irreparable harm to the plaintiff is not by itself sufficient to give a plaintiff prevailing party status." *Id.* at 805; *J.O. v. Orange Twnshp. Bd. of Educ.*, 287 F.3d 267, 272-74 (3d Cir. 2002) ("a temporary restraining order cannot constitute the type [of] merit-based relief that affords a plaintiff prevailing party status."); *Foreman v. Dallas County*, 193 F.3d 314, 323 (5th Cir. 1999) ("A temporary restraining order is not merits-based relief . . . As such, a temporary restraining order cannot constitute the type merit-based relief that affords a plaintiff prevailing party status."). Accordingly, Plaintiffs are not entitled to their legal fees in obtaining the TRO.

B.

Turning next to Plaintiffs' claim that they are prevailing parties because they obtained the Interim Ruling on Stay Put Motion and Ruling on Stay Put Motion, the Court notes that there is some dispute among the parties whether success at the administrative level without more satisfies the Second Circuit's requirement of a "sufficient judicial imprimatur." Plaintiffs have cited two decisions from judges of this Court that have awarded attorneys fees under IDEA to parties who had prevailed at the administrative level but had obtained no court ruling. *See L.C. v. Waterbury Bd. of Educ.*, No. Civ.A. 300CV580 (CFD), at *5-6, 2002 WL 519715 (D. Conn. Mar. 21, 2002); *W.S. v. New Britain Bd. of Educ.,* 3:01cv1975 (JCH), slip op. at 7-12 (D. Conn. March 20, 2003).

The Court need not reach this issue because even assuming (without deciding) that IDEA authorizes an award of fees for obtaining administrative rulings alone, the Court nonetheless

concludes Plaintiffs are not prevailing parties within the meaning of relevant case law because they did not obtain a decision on the merits and did not achieve a change in the legal relationship between the parties. *See J.O.*, 287 F.3d at 272-74 (although "maintenance of a child's educational placement is an important aspect of IDEA" ALJ's order was analogous to a stay put and as such did not make the parents prevailing parties for the purposes of the IDEA).

There can be no question that the Interim Ruling on Stay Put Motion was not a decision on the merits. It was, as it says, merely an interim ruling, and it did not even purport to finally decide the stay put issues. As such, it is analogous to Judge Dorsey's TRO, discussed above.

Admittedly, the Hearing Officer's subsequent Ruling on Stay Put Motion presents a closer question, since Plaintiffs did obtain some interim relief pending the final determination of their administrative challenge. Nevertheless, the Court concludes that the stay put decision was not a decision on the merits of the parties' claims that altered their relationships in the manner that *Buckhannon*, and the Second Circuit cases applying that decision, appear to contemplate. Rather, the stay put ruling in this case is similar to other interim rulings that maintain the status quo without purporting to adjudicate the underlying merits of the parties' claims. *See Maine Sch. Admin. Dist. No. 35 v. Mr. R.*, 321 F.3d 9, 15 (1st Cir. 2003) ("interlocutory orders that serve merely to maintain the status quo usually are deemed insufficient to buoy a fee award"); *Haley v. Pataki*, 106 F.3d 478, 483 (2d Cir. 1997) (concluding that "[w]hen a party receives a stay or preliminary injunction but never obtains a final judgment, attorneys' fees are proper if the court's action in granting the preliminary injunction is governed by its assessment of the merits."). Indeed, the Hearing Officer expressly noted in her stay put decision that "[t]here is no finding at this time . . . regarding the appropriateness of the Shelton Board's proposed program from the

Student for t 2004-2005 school year." Ruling on Mot. for Stay Put, Pls.' Mem., App. A., at ¶ 7. Neither of the Hearing Officer's rulings placed any additional requirements or responsibilities upon any of the defendants with regard to J.G. *See* Trumbull's Mem. in Resp. [doc. #47] at 2. And, of course, we now know that the Hearing Officer in her Final Decision rejected Plaintiffs' claims against Trumbull and Shelton on the merits.

Other courts have held that obtaining stay put relief without an adjudication of the merits does not qualify as "prevailing" for purposes of IDEA's attorneys' fee provisions. The Third Circuit's decision in *J.O.*, *supra*, is one recent example. There, the court observed that "[s]tay-put orders are designed to maintain the status quo during the course of proceedings. They 'function[], in essence as an automatic preliminary injunction.' " 287 F.3d at 272; *Drinker v. Colonial Sch Dist.*, 78 F.3d 859, 864 (3d Cir. 1996) (IDEA's stay put provision is "an absolute rule" to maintain the current educational placement "regardless" of the merits of the case). Similarly in *Bd. of Educ. of Oak Park v. Nathan R.* 199 F.3d 377, 382 (7th Cir. 2000), the Seventh Circuit rejected a claim for prevailing party status on the basis of obtaining relief under the stay-put provision. In the court's words, that "de facto 'win' [that] does not rise to the level of an enforceable judgment, consent decree, or settlement that materially alters the relationship between the parties. The relief the Parents received was only interim in nature, and . . . [the] invocation of the stay-put provision of the IDEA does not entitle the party to attorneys' fees." *Id.* (citing *Bd. Of Educ. Of Downers Grove Grade Sch. Dist. No. 58 v. Steven L.*, 89 F.3d 464, 469 (7th Cir. 2000).[1]

III.

[1] Because the Court concludes that Plaintiffs are not prevailing parties entitled to an award of attorneys' fees under IDEA, the Court need not, and does not, address Defendants' argument that Plaintiffs' fee request is excessive or improperly justified.

Because the Court concludes that Plaintiffs have failed to show that they are prevailing parties within the meaning of IDEA, the Court DENIES Plaintiffs' Motion for Attorney's Fees [**doc. #32**]. Since that is the only remaining issue in this case, the Clerk is directed to enter final judgment and close the file.

IT IS SO ORDERED.

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: **February 24, 2005**.