UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

GREENWICH BOARD OF EDUCATION,	:	
Plaintiff,	:	CIVIL ACTION NO. 3:03-cv-1407 (JCH)
v.	:	
ALICIA TOROK AND TERRY TOROK, as parents and next friends of J.	:	
Defendants.	:	OCTOBER 22, 2003

RULING ON
DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION [DKT. NO. 7]
AND PLAINTIFF'S MOTION FOR STAY [DKT. NO. 18]

Upon consideration of the evidence and arguments of counsel for the parties at the October 1, 2003 Order to Show Cause Hearing and the October 20, 2003 telephone conference, the court makes the following findings of fact and conclusions of law.[1]

FINDINGS OF FACT

1. Plaintiff is the Board of Education ("Board") for the Town of Greenwich, Connecticut.

2. "J." is a six-year old boy who resides with his parents, Alicia and Terry Torok, the

[1]Any finding of fact which may be deemed a conclusion of law is incorporated into the conclusions of law section, and any conclusion of law which may be deemed a finding of fact is incorporated into the findings of fact section.

defendants in this case.[2] The Toroks are residents of the Town of Greenwich.

3. Based on a Planning and Placement Team (PPT)[3] meeting conducted by the Board and at least one expert evaluation, "J." was classified as developmentally delayed for the 2001-2002 school year and placed at Milbank School, an integrated preschool program in the Greenwich public school systems, providing services to special education children alongside their non-disabled peers.

4. The defendants disagreed with the individualized education plan (IEP)[4] for J. for the 2002-2003 school year, which involved attending kindergarten at Hamilton Avenue School. The disagreement stemmed in part from an independent evaluation obtained by

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[2] On October 1, 2003, the court granted the plaintiff's motion [Dkt. No. 17] to join as a defendant the Commissioner of the Department of Education for the State of Connecticut, in light of the state's potential liability in this matter. See Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq. ("IDEA" or "the Act").

[3] An "individualized education plan" ("IEP") is prepared at least annually, in writing, to address the particular educational needs of a disabled child and the services required to satisfy those needs. 20 U.S.C. § 1414 (d)(4)(A)(I). In Connecticut, the Planning and Placement Team ("PPT") is the team that prepares the IEP and is comprised of the child's parent(s), a school official qualified in special education, the child's teacher, and, when appropriate, the child. See id. at § 1414(d)(1)(B). An IEP is meant to ensure that all children with disabilities, as defined under the IDEA, 20 U.S.C. §§ 1401(3)(A), receive a "free and appropriate public education." 20 U.S.C. §§ 1412 (a)(1)(A).

Due to its participation in the IDEA program, Connecticut has enacted legislation to meet federal requirements. See Conn. Gen. Stat. § 10-76a through 10-76ee. If the parents of a disabled child disagree with the IEP prepared by the PPT, the parents may seek review through an impartial due process hearing. See Conn. Gen. Stat. § 10-76h(a)(1).

[4] See supra note 2.

the defendants diagnosing J. with "Autistic Spectrum Disorder." Based in part on this evaluation, the defendants have come to believe that the proposed placement was inappropriate because J. required more time in individualized, "one-on-one" therapy, among other concerns. In contrast, the Greenwich Public School Staff concluded that J. did not qualify for an IDEA designation of "autism."

5. The defendants appealed, and, by final decision and order dated July 24, 2003, Hearing Officer Justino Rosado ("the HO") concluded that the Board failed to offer an appropriate program for J. for the 2001-2002 and 2002-2003 school years ("HO's Decision" or "Decision"). Among other things, the HO ordered that J.'s classification be changed from "Other Health Impaired" to "Autism." The HO also ordered the Board to: 1) reimburse the defendants for the cost of various forms of therapy that had been provided in the home since August of 2002; 2) provide and/or fund various additional hours of therapy at school and/or at home; and 3) continue to fund therapy that was ongoing.

6. The Board brings this action seeking declaratory and injunctive relief pursuant to 20 U.S.C. § 1415i(2)(A) of the IDEA. In response, the defendants filed a Motion for Mandatory IDEA Pendency Injunction [Dkt. No. 7] to force the Board to comply with the HO's Decision. The Board then moved for a stay of the HO's Decision. [Dkt. No. 18].

7. On October 1, 2003, after issuing an order to show cause, the court held a non-

evidentiary hearing on the pending cross-motions.[5] After hearing extensive argument from both sides, the court granted a temporary restraining order in favor of the defendants until October 22, 2003, the date of the then-scheduled hearing on the preliminary injunction motion. The court also scheduled a pre-hearing teleconference for October 20, 2003 in order to allow both sides an opportunity to identify the evidence they planned to present at the scheduled October 22nd preliminary injunction hearing. The court stated its intention to decide, based on the proposed evidence presented at the teleconference, whether a hearing was necessary to its decision on the pending motions.

8. At the October 21, 2003 teleconference, it became evident to the court that the evidence the Board proposed to present at the scheduled hearing challenged the merits of the HO's Decision. The parties did not identify any disputed issues of material fact concerning the substance of the HO's Decision. The Board brought to the court's attention evidence that J. is exhibiting new, harmful behaviors that it believes has resulted from too

[5] At this hearing, the court expressed concern over the fact that the defendant had not pled any cause of action or sought any relief in its answer that might support the issuance of a preliminary injunction in its favor. However, for the sake of expediency, the Board informed the court that it did not object to the defendants' motion for a preliminary injunction on these grounds and waived any procedural objection to the motion. The motion itself gives adequate notice of the relief sought by the defendant. The court notes that the Board's motion for a stay of the HO's decision, filed a few days before the hearing, seeks, in effect, relief which would be the equivalent of a denial of the defendants' motion for preliminary injunction.

much time spent in one-on-one therapy ordered by the HO and not enough time spent with peers. The Board admitted, however, that J. was receiving individualized therapy before the HO issued its Decision. In response, the defendants argued that the Board was simply rehashing the evidence and arguments it had already made to the HO, noting that many of these behaviors have been ongoing and are unrelated to the form of treatment.

CONCLUSIONS OF LAW

1. This court has subject matter jurisdiction. See 28 U.S.C. § 1331; 20 U.S.C. § 1401 et seq.

2. The Individuals with Disabilities Education Act, 20 U.S.C. § 1401 et seq. ("IDEA" or "the Act"), "gives parents the right to an impartial due process hearing on complaints regarding the educational placement of their handicapped children and to state or federal judicial review of final administrative decisions." Drinker v. Colonial School District, 78 F.3d 859, 863 (3d Cir. 1996). The Act's "stay-put" provision, now § 1415(j), which is entitled "Maintenance of current educational placement," mandates the following:

> Except as provided in subsection (k)(7), 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 such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.

Id. (formerly § 1415(e)(3)). "Section 1415(j) 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.' " Cosgrove v. Bd. of Ed., 175 F. Supp. 2d 375, 383 (N.D.N.Y. 2001) (quoting Susquenita School Dist. v. Raelee S., 96 F.3d 78, 83 (3d Cir. 1996)). The Second Circuit, among other circuits, has described § 1415(j) as an "automatic preliminary injunction" that "substitutes an absolute rule in favor of the status quo for the court's discretionary consideration of the factors of irreparable harm and either a likelihood of success on the merits or a fair ground for litigation and a balance of hardships." Zvi D. by Shirley D. v. Ambach, 694 F.2d 904, 906 (2d Cir. 1982); see also Drinker, 78 F.3d at 864-865 (borrowing Zvi D.'s terminology to describe the stay-put provision as "automatic preliminary injunction" and stating that "[o]nce a court ascertains the student's current educational placement, the movants are entitled to an order without the satisfaction of the usual prerequisites to injunctive relief") (citations omitted); Bd. of Educ. of Community High Sch. Dist. No. 218 v. Illinois State Bd. of Educ., 103 F.3d 545, 548 (7th Cir. 1996) ("Because the preliminary injunction was issued in conformity with the stay-put provision, no evidentiary hearing was warranted.");[6] Bd. of Educ. v. Schutz, 137 F. Supp.

[6] Likewise, this court concludes that no evidentiary hearing is necessary because the proposed evidence discussed by the parties at the teleconference failed to generate any material factual disputes relevant to the question of whether the preliminary injunction should issue.

2d 83, 92 (N.D.N.Y. 2001) (citing Zvi D.'s "automatic preliminary injunction" language and concluding that Section 1415(j) "mandate[s]" injunctive relief ordering the district to pay child's private school tuition in light of state review officer's decision in favor of parents); Warton v. New Fairfield Bd. of Educ., 125 F. Supp. 2d 22, 25 (D. Conn. 2000) ("Where a party is seeking an order from the court upholding a stay-put placement under the IDEA, the IDEA statute is in effect an automatic preliminary injunction.").

3. In 1999, Congress amended section 300.514 of title 34 of the Code of Federal Regulations to include subsection (c), which provides:

> If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

Id.

4. In accordance with this regulation, courts have concluded that administrative decisions by HOs and/or state review officials in favor of parents constitute "agreements" under 34 C.F.R. § 300.514(c) and thus represent the child's "current education placement" for purposes of the IDEA's stay-put provision. See Bd. of Educ. v. Schutz, 290 F.3d 476, 482-484 (2d Cir. 2002) (concluding that hearing officer's decision in favor of parents, later affirmed by a state review officer, constituted an agreement with the child's parents under 34 C.F.R. § 300.15, and thus represented a "placement" within the meaning of the pendent

placement provision); Murphy v. Arlington Cent. Sch. Dist. Bd. of Educ., 297 F.3d 195, 200-201 (2d Cir. 2002) (relying on Schutz , as "factually indistinguishable," to reach same conclusion); Bd. of Educ. of the Pine Plains Cent. Sch. Dist. v. Engwiller, 170 F. Supp. 2d 410, 414 (S.D.N.Y. 2001) ("the law treats an administrative decision favorable to the parents and against the District as creating a de jure agreement between the parents and the State"); see also Clovis Unified School District v. California Office of Administrative Hearings, 903 F.2d 635, 641 (9th Cir. 1990) (concluding that, despite parents' unilateral change in placement, school district was responsible for maintaining the placement pending court review proceedings in light of hearing officer's decision in favor of parent's choice); cf. Georgia State Dep't of Ed. v. Cherry, 314 F.3d 545, 552 (11th Cir. 2002) (explaining rationale for stay-put provision and its mandate that parents be reimbursed for funds expended to have child remain in what state has determined to be an appropriate placement).

5. Thus, under 34 C.F.R. § 300.514 and the relevant case law, the HO's Decision constitutes "an agreement between the State or local agency and the parents" and represents J's current educational placement subject to the automatic preliminary injunction provision of § 1415(j). The defendants are therefore entitled to a preliminary injunction, and their motion is granted [Dkt. No. 7]. The Board's motion for a stay of the HO's decision [Dkt. No. 18] is accordingly denied.

IT IS THEREFORE ORDERED that the Greenwich Board of Education implement the current educational placement as set forth in the July 24, 2003 Final Decision and Order of Hearing Officer Justino Rosado. This Order shall remain in full force and effect until a trial on the merits or further order of this court.[7]

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[7] The court exercises its discretion to dispense with the security requirement of Rule 65(c) in light of the unique circumstances presented here. See 13 Moore's Federal Practice § 65.52 at 65-96 (3d. ed. 2003) ("A district court issuing an injunction or restraining order has the discretion to dispense with the security requirement of Rule 65(c) . . . under limited circumstances."). In considering the pending motions and having reviewed the relevant case law, the court is *preliminarily* persuaded that the Board will not be entitled to recoup payments from the parents should it ultimately prevail. See generally Clovis, 903 F.2d at 641 (concluding that parents would not be required to reimburse the school district even if the district were to prevail on appeal); Henry v. School Admin. Unit 29, 70 F. Supp. 2d 52, 59 (D.N.H. 1999) (no right to reimbursement from parents); see generally Engwiller, 170 F. Supp. 2d at 415 (citing cases on issue of reimbursement); cf. Susquenita, 96 F.3d at 87 n.10 (refusing to reach the issue as it was "premature").

Further, the court concludes that requiring a bond in circumstances such as these might discourage children and their parents from enforcing their federal rights under the IDEA. Counsel for the defendants has represented to the court that the Toroks do not have the financial resources to pay for the therapy ordered by the HO, and the Board has not sought to contradict these representations. Thus, no bond will issue. Cf. Crowley v. Local No. 82, 679 F.2d 978, 1000-1001 (1st Cir. 1982) (district court acted within its discretion in not requiring bond when plaintiffs were not able to afford security and bond requirement would adversely affect enforcement of rights under Title VII); People ex rel. Van De Kamp v. Tahoe Reg'l Planning Agency, 766 F.2d 1319, 1325-26 (9th Cir. 1985) (court has discretion to dispense with security requirement when requiring security would effectively deny access to judicial review); see also Pharmaceutical Society v. New York State Dep't of Soc. Servs., 50 F.3d 1168, 1174-75 (2d Cir. 1995) (upholding waiver of bond requirement based on lack of financial resources and fact that litigation was ultimately in public interest).

SO ORDERED.

Dated at Bridgeport, Connecticut this 22nd day of October, 2003.

/s/Janet C. Hall
Janet C. Hall
United States District Court