

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

WEST PLATTE R-II SCHOOL)
DISTRICT,)
)
Plaintiff,)
)
vs.) Case No. 04-6040-CV-SJ-ODS
)
JUDI WILSON, by and on behalf)
of her son, L.W.,)
)
Defendants.)

ORDER (1) GRANTING DEFENDANTS' MOTION FOR PRELIMINARY INJUNCTION,
AND (2) RETROACTIVELY GRANTING PLAINTIFF'S MOTION FOR
LEAVE TO FILE EXCESS PAGES

Pending are Defendants' Motion for Preliminary Injunction (Doc. # 4), and Plaintiff's Motion for Leave to File Excess Pages (Doc. # 8). For the following reasons, both motions are granted.

I. BACKGROUND

The above-captioned matter was filed pursuant to the Individuals with Disabilities Education Act ("IDEA") and section 162.961 of the Missouri Revised Statutes. West Platte R-II School District ("the District") seeks review of the decision by a panel, convened by the Department of Elementary and Secondary Education (DESE), with regard to the due process complaint filed by Defendant Judi Wilson on behalf of her son, Defendant L.W., who suffers from severe dyslexia. The panel rendered its decision in favor of Defendants on April 5, 2004, and ordered, among other things, that the District incorporate a multi-disciplinary approach that utilizes all sensory modalities; a structured, sequential teaching approach to teach L.W. the structure of the English language; at least one hour per day of one-on-one instruction in decoding/phonics; and a teacher with special training and expertise in teaching children with severe dyslexia.

Beginning this fall, L.W. will be attending the seventh grade; however, the District refuses to implement the changes ordered by the panel. Instead, the District intends to implement the Individualized Education Plan (“IEP”) that it prepared in March 2004. In order to implement the IEP, the consent of L.W.’s mother is necessary. On June 18, 2004, Defendants filed their Motion for Preliminary Injunction, arguing that the District must implement the panel’s decision. Defendants further argued that the District should not be permitted to implement the IEP it formulated or retain L.W. in the sixth grade.

II. DISCUSSION

The IDEA provides for the creation of an IEP for each handicapped child, which is the result of a collaboration among the child’s parents, educators and specialists. 20 U.S.C. § 1414(d). When parents disagree with the IEP, they may request and receive an impartial due process hearing. 20 U.S.C. § 1415(f)(1). During the pendency of the due process hearing, parents are entitled to have the child remain in his or her “current educational placement.” 20 U.S.C. § 1415(j). Section 1415(j) of the IDEA, more commonly known as the “stay-put” provision, mandates that “unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement.” *Id.*

In 1985, the Supreme Court found that an administrative panel’s decision in favor of the parents’ position “would seem to constitute agreement by the State to the change in placement” for the purposes of section 1415(j). Sch. Comm. of Town of Burlington v. Mass. Dep’t of Educ., 471 U.S. 359, 373 (1985). Subsequent to Burlington, Congress amended section 34 C.F.R. § 300.514, which now provides:

If the decision of a hearing officer in a due process hearing conducted by the SEA [State Education Agency] 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.

34 C.F.R. § 300.514(c). Pursuant to this regulation, many courts have found that an administrative decision in favor of the parents is equivalent to an agreement between

the state agency and the parents and, therefore, represents the child's current education placement for purposes of the "stay put" provision. See e.g., Bd. of Educ. v. Schutz, 290 F.3d 476, 482-84 (2d Cir. 2002); Georgia State Dep't of Education v. Derrick C., 314 F.3d 545, 552 (11th Cir. 2002); Susquenita Sch. Dist. v. Raelee S., 96 F.3d 78, 83-84 (3d Cir. 1996); Clovis Unified Sch. Dist. v. Cal. Office of Admin. Hearings, 903 F.2d 635, 641 (9th Cir. 1990); Bd. of Educ. of Pine Plains Cent. Sch. Dist. v. Engwiller, 170 F. Supp.2d 410, 413-14 (S.D.N.Y. 2002). The undersigned will follow the courts' interpretation, which is inconsistent with the District's constitutional and statutory arguments. The DESE panel's decision constitutes an agreement between the State of Missouri and L.W.'s parents and represents L.W.'s current education placement.¹

"Whether a preliminary injunction should issue involves consideration of (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and the injury that granting the injunction will inflict on other parties litigant; (3) the probability that movant will succeed on the merits; and (4) the public interest."

Dataphase Sys., Inc. v. C.L. Sys., Inc., 640 F.2d 109, 113 (8th Cir. 1981) (en banc).

A. Threat of Irreparable Harm to Movant

Defendant L.W. will suffer irreparable harm if the District is not enjoined because he will not receive the proper education and assistance he needs and to which he is entitled. It is enough that the DESE panel's decision indicates that the special services it mandated will greatly assist L.W.

¹ The District also contends that the regulations do not apply because Defendants did not request and the panel did not award a change in placement. The Court finds that the panel's decision fundamentally modified L.W.'s educational placement and, therefore, the regulations do apply. The District's argument that the IDEA does not require it to provide prospective relief to L.W. also fails because (1) the District does not include this argument as one of its points on appeal, and (2) it is without merit. See G. ex rel. RG v. Fort Bragg Dependent Schs., 343 F.3d 295 (4th Cir. 2003).

B. Balance Between Harm and Injury to Other Parties

The state of the balance between L.W.'s harm and the injury that granting the injunction will inflict on the District must also be considered. The injury harm asserted by the District is that it would be forced to expend its limited resources to implement the panel's decision. This injury is *de minimus* compared to the harm of a child not receiving the appropriate education to which he or she is entitled.

C. Probability of Movant's Success on the Merits

This Court shall afford the DESE panel's decision due deference and must not substitute its own notion of "sound educational policy." Independent Sch. Dist. No. 283 v. S.D., 88 F.3d 556, 561 (8th Cir. 1996) (citations omitted); see also Bd. of Educ. v. Rowley, 458 U.S. 176, 206 (1982). "Under IDEA, the reviewing court bases its decision on the preponderance of the evidence. That is a less deferential standard of review than the substantial evidence test common to federal administrative law. But it still requires the reviewing court to give 'due weight' to agency decision-making." Breen v. St. Charles R-IV Sch. Dist., 2 F. Supp.2d 1214, 1220 (E.D. Mo. 1997). Given this standard of review, Movants have a high likelihood of success on the merits.

D. Public Interest

The public interest lies in the enforcement of the IDEA, the maintenance of appropriate education services for special education students, and the protection of due process rights of special education students and their parents. See M.A. ex rel. E.S. v. State-Operated Sch. Dist. of City of Newark, 344 F.3d 335, 352 (3d Cir. 2003); Petties v. Dist. of Columbia, 238 F. Supp.2d 114, 125 (D. D.C. 2002); Bd. of Educ. of Oak Park & River Forest High Sch. Dist. No. 200 v. Ill. State Bd. of Educ., 10 F. Supp.2d 971, 981 (N.D. Ill. 1998). Because all four factors considered with regard to the issuance of a preliminary injunction weigh in favor of Defendants, their Motion for Preliminary Injunction is granted.

III. CONCLUSION

For the foregoing reasons, Defendants' Motion for Preliminary Injunction is granted, Defendants' request for a hearing on this matter is denied as moot, and Plaintiff's Motion for Leave to File Excess Pages is retroactively granted.

Consistent with the above discussion, the preliminary injunction is granted as follows:

- (1) West Platte R-II School District is hereby preliminarily enjoined during the course of this action from violating the agreement executed by the State of Missouri and Defendant Judi Wilson;
- (2) West Platte R-II School District shall implement the current educational placement as set forth in the April 5, 2004, DESE Due Process Hearing Panel's Decision;
- (3) This Order shall remain in full force and effect until a trial on the merits or further order of this Court.²

IT IS SO ORDERED.

DATE: July 20, 2004

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT

² The Court exercises its discretion to dispense with the security requirement of Rule 65(c) in light of the unique circumstances presented in this case. See Clovis, 903 F.2d at 641. Even if the District were to prevail in this case, the parents would not be required to reimburse the District. See Engwiller, 170 F. Supp.2d at 415; Henry v. Sch. Admin Unit 29, 70 F. Supp.2d 52, 59 (D. N.H. 1999). Additionally, requiring bond in this case could discourage children and their parents from enforcing their rights under the IDEA.