

**UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE**

<b>ROBERT BELL, et al.</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Civil no. 00-CV-160-B</b>
	)	
<b>EDUCATION in the</b>	)	
<b>UNORGANIZED TERRITORIES, et al.</b>	)	
	)	
<b>Defendants.</b>	)	

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

SINGAL, District Judge

Before the Court is Plaintiffs’ Motion for Preliminary Injunction pursuant to section 20 U.S.C. § 1415(j), the “stay put” provision of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400-1490.<sup>1</sup> For the reasons discussed below, Plaintiffs’ Motion is GRANTED. The grant or refusal of an interlocutory injunction necessitates that the Court lay out findings of fact and conclusions of law, according to Fed. R. Civ. P. 52(a).

**I. FINDINGS OF FACT**

For the purposes of the Motion for Preliminary Injunction, the facts of the case are essentially undisputed.

1. The Plaintiffs, Robert and Jane Bell, are the parents of Jesse Bell, an autistic nineteen year-old with an intelligence quotient of 43. The Bells reside in

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<sup>1</sup> Section 1400(a) states that the appropriate short title of the statute is the “Individuals with Disabilities Education Act”, but many refer to it as the “Education for All Handicapped Children Act”, which is the name of the statute that amended and expanded the IDEA in 1975.

Edmunds, which is within the Unorganized Territories of Maine.

2. Defendant Education in the Unorganized Territories (“EUT”) is the local agency responsible for educating children in the Unorganized Territories.

3. Defendant J. Duke Albanese administers EUT in his official capacity as commissioner of the Maine Department of Education.

4. An agency of the State of Maine, EUT has funded and overseen Jesse’s education since grade school.

5. Pursuant to the IDEA, the education of each disabled child is supervised by a team consisting of the child’s parents, teachers, school board representatives and if appropriate, the student herself. In Maine, this team is referred to as the pupil evaluation team (“PET”).<sup>2</sup>

6. Each year, the PET develops a plan for the child’s curriculum, and memorializes the plan in a written document entitled the individualized education program (“IEP”). See 20 U.S.C. §§ 1401(11); 1414(d).

7. Each year, Jesse’s PET has produced an IEP for him describing a curriculum featuring various special educational services.

8. For his high school years, Jesse’s IEPs have specified that he was to receive such educational services at Washington Academy, a private school.<sup>3</sup>

9. Pursuant to those IEPs, Jesse has attended Washington Academy since the autumn of 1996 at EUT’s expense.

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<sup>2</sup> What Maine law refers to as a pupil evaluation team is identified in the federal IDEA as an “individualized education program team” or an “IEP team”. See 20 U.S.C. § 1414 (d)(1)(B); 20-A M.R.S.A. § 7202(10); 05-071-101 Code Me. R. §§ 8.1-8.11.

<sup>3</sup> During oral arguments, Plaintiffs’ attorney represented that there are no public schools in the Unorganized Territories, so all children living in the Unorganized Territories have the right to attend private schools at the expense of EUT.

10. In the spring of 2000, Jesse's PET recommended that Jesse graduate with his class in the summer of 2000.

11. Disagreeing with the PET's recommendation, his parents filed a request on April 11, 2000 for a due process administrative hearing pursuant to 20 U.S.C. § 1415(f).

12. The Bells maintain that Jesse is not yet ready to graduate from high school, and they allege that EUT has denied Jesse a "free appropriate public education" pursuant to the IDEA by failing to provide Jesse with all of the services that he requires.

13. A due process hearing was held on May 8, May 9 and June 20, 2000. On July 14, 2000, the hearing officer issued a finding in favor of EUT.

14. The hearing officer found that EUT had not denied Jesse a free appropriate public education and ordered Washington Academy to send Jesse a diploma.

15. Pursuant to the hearing officer's ruling, Washington Academy sent a signed diploma to Jesse.

16. On August 14, 2000, the Bells appealed the hearing decision by filing a complaint with this Court.

17. With the school year fast approaching, the Bells also filed a Motion for Preliminary Injunction, arguing that Jesse should remain at Washington Academy while this Court considers the merits of their appeal.

## **II. CONCLUSIONS OF LAW**

1. Because of his autism, Jesse is a child with a disability protected by the IDEA. See 20 U.S.C. § 1401(3)(A)(i).

2. EUT is both an “educational service agency” and a “local educational agency” within the meaning of the IDEA. See 20 U.S.C. §§ 1401(4), 1401(15).
3. EUT is responsible for providing Jesse with a free appropriate public education. See, e.g., 20 U.S.C. §§ 1412(a)(1)(A), 1412(a)(10)(B).
4. The Court finds Jesse’s “then-current educational placement” as attending Washington Academy according to the curriculum outlined in the 1999-2000 IEP.
5. Defendants have changed Jesse’s current placement by graduating him and by allowing Washington Academy to send him a diploma.
6. By acting to change Jesse’s educational placement, Defendants have the burden of making the four-part showing necessary for a preliminary injunction.
7. The four elements of a preliminary injunction are: (1) likelihood of success on the merits, (2) potential for irreparable harm if the injunction is denied, (3) balance of the hardships, and (4) effect on the public interest.
8. The record as it presently stands is insufficient to convince the Court that (1) Defendants are likely to succeed on the merits, (2) Defendants could suffer irreparable harm, (3) the balance of hardships favors Defendants, or (4) preventing Jesse from attending Washington Academy is within the public interest.
9. Therefore, the stay put provision requires that EUT continue to educate Jesse Bell at Washington Academy according to the terms of the 1999-2000 IEP.
10. Because the burden was on Defendants to make the four-part showing for preliminary injunction, it would be unfair to require Plaintiffs to post a bond pursuant to Fed. R. Civ. P. 65(c).
11. Thus, Plaintiffs need not post any security in regard to this Order.

### III. DISCUSSION

The Court offers the following discussion to explain its conclusions of law.

#### A. The Stay Put Provision

Plaintiffs' Motion requires this Court to apply and interpret the "stay put" provision of the IDEA, 20 U.S.C. § 1415(j). Before delving into an extensive discussion of the "stay put" provision, it is important to note the general purpose behind the enactment of the IDEA.

The IDEA establishes a system to ensure that disabled students receive free appropriate public education.

The Act represents an ambitious federal effort to promote the education of handicapped children, and was passed in response to Congress' perception that a majority of handicapped children in the United States "were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to 'drop out.'"

Bd. of Educ. v. Rowley, 458 U.S. 176, 179 (1982). The IDEA allocates federal funds to state schools on the condition that those schools comply with extensive goals and procedures. See id.

Many of those procedures are found in section 1415. Specifically, section 1415 allows for an administrative hearing, thereby enabling disabled children – through those who act on their behalf, such as parents, guardians or child-protection agencies – to challenge decisions made by schools or educational agencies regarding services and placements. Upon the filing of a complaint, a hearing is held and an impartial hearing officer issues a decision. This decision may be appealed to the local federal district court.

Once the representative of a disabled child has filed a complaint against an educational agency, section 1415(j), often referred to as the “stay put” provision, operates to compel the educational agency to continue teaching the child at her “then-current educational placement” until the case is resolved. 20 U.S.C. § 1415(j). The stay put provision states in pertinent part that

during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parent 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 system until all such proceedings have been completed.

Id.<sup>4</sup> The congressional intent of the stay put provision was to ensure that public schools do not remove handicapped children over parents’ objections pending completion of legal proceedings. See Sch. Comm. of Burlington v. Dep’t of Educ., 471 U.S. 359, 373 (1985). The stay put provision creates a strong presumption that children remain in their current educational placements while their parents and school districts sort out the legal ramifications. See Honig v. Doe, 484 U.S. 305, 328 (1988).

### **1. Applicability of Traditional Preliminary Injunction Criteria**

Plaintiffs argue that the stay put provision creates an automatic injunction, compelling EUT to allow Jesse to continue taking classes at Washington Academy until final resolution of this case. Asserting that the stay put provision does not operate automatically, Defendants argue that Plaintiffs must make the four showings traditionally necessary to obtain a preliminary injunction: (1) likelihood of success on the merits, (2) potential for irreparable harm if the injunction is denied, (3) balance of the hardships, and

(4) effect on the public interest. See Ross-Simons of Warwick, Inc. v. Baccarat, Inc., 102 F.3d 12, 15 (1<sup>st</sup> Cir. 1996) (laying out the four traditional requirements in case not involving IDEA). Defendants cite Doe v. Brookline Sch. Comm., 722 F.2d 910 (1<sup>st</sup> Cir. 1983) as support for their theory that the four-part showing for preliminary injunctive relief applies to the Court’s determination under the stay put provision.

In Brookline, the First Circuit explicitly discussed the role of a motion for preliminary injunction in a case involving the stay put provision. See id. at 917. In Brookline, the defendant school committee unilaterally ceased funding a handicapped child’s education at a private school, although the private school was the last agreed upon placement under the child’s IEP. See id. The parents of the child filed a motion asking the district court to order the school committee to continue paying the child’s tuition. See id. at 913. Treating the parents’ motion as a motion for preliminary injunction, the court reasoned that it should consider the four requirements traditionally necessary for imposing preliminary injunctive relief. See id. at 917.

The First Circuit found that the burden to establish the four criteria, however, was on the school district, not the parents, because the school district had unilaterally stopped paying the child’s tuition. See id. The court held that “We believe that because Congress has expressed a strong preference for the preservation of the status quo through its enactment of [the stay put provision] ... the motion for preliminary injunction should be made by the party wishing to depart from the status quo, here the school committee.” Id. “[A] party that seeks to modify an existing educational placement, program or services must proceed by a motion for preliminary injunction ... the party seeking a modification of the status quo should bear the burden of proof.” Id. at 919. Thus, the Court reads

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<sup>4</sup> The stay put provision previously was codified at 20 U.S.C. § 1415(e)(3).

Brookline as requiring that it apply the traditional four-factor test for preliminary injunctive relief to the party seeking to change Jesse’s placement from the status quo.

## 2. The “Status Quo” or Current Placement

To determine who bears this burden, the Court must ascertain Jesse’s “then-current educational placement” under the stay put provision. See 20 U.S.C. § 1415(j).

Defendants contend that the status quo placement is that Jesse currently is graduated, pursuant to the hearing officer’s decision. Even though the hearing officer approved of the decision to graduate Jesse, the hearing officer did not specify what constitutes Jesse’s current placement. The hearing decision only states: “On May 10, 2000 the Hearing Officer ordered “*stay put*” as the 5/26-6/10/99 IEP...” (Def. Resp. to Pl. Mot. for Prelim. Inj., Attach. 1, Docket #3, Due Process Hearing Decision #00.114 “Bell v. EUT” (italics in original).) The IEP dated May 26, 1999 and June 10, 1999 indicates that Jesse would attend Washington Academy for the 1999-2000 school year, and outlines Jesse’s curriculum. The hearing decision says nothing more regarding the stay put provision of the IDEA, leaving this Court in a quandary as to the precise meaning of the above quoted sentence. At oral argument, Plaintiffs’ counsel stated that the issue – what should constitute the appropriate stay put placement in the event that either party appealed the hearing officer’s decision – was not raised during the hearing.<sup>5</sup>

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<sup>5</sup> The Court notes that this ambiguity could be avoided if a hearing officer inquired into the issue during a hearing and made detailed findings as to what constituted the appropriate current placement. Such determinations would greatly assist parties in understanding who ought to move for a preliminary injunction under section 1415(j) and where the child should be placed while any such motion or appeal is pending. In addition, it would also be helpful if a hearing decision reflected whether the parties agreed, prior to the hearing, that the hearing officer’s decision as to current placement would bind them. See Verhoeven v. Brunswick Sch. Comm., 207 F.3d 1, 8-9 (1<sup>st</sup> Cir. 1999) (finding that agreement between parents and school committee to let hearing officer resolve stay put placement was binding and prevented

In the instant case, the Court finds Jesse's current educational placement as attending Washington Academy according to the curriculum outlined in the 1999-2000 IEP. In the spring of 1999 while Jesse was still attending classes at Washington Academy, Plaintiffs objected to Defendants' intention to graduate Jesse. The hearing took place while Jesse was still enrolled in school. The Court interprets "... the Hearing Officer ordered "*stay put*" as the 5/26-6/10/99 IEP..." to mean that the hearing officer considered Jesse's curriculum at Washington Academy as his current placement within the meaning of section 1415(j). The Court concurs with that assessment.

After establishing Jesse's current placement as Washington Academy, the Court now must consider whether that placement has been changed. Federal and state regulations, as well as a handful of cases, assert that graduation qualifies as a change in placement. See Carl v. Mundelein High Sch. Dist. 120, 1993 WL 787899 at \*2 (N.D. Ill. 1993) (imposing preliminary injunction because school graduated child during pendency of administrative proceeding); Cronin v. Bd. of Educ., 689 F. Supp. 197, 203 (S.D.N.Y. 1988) ("[T]he decision to graduate a handicapped child is a change in educational placement ... that triggers all of the procedural protections of the Act.") (internal quotations omitted); Stock v. Massachusetts Hosp. Sch., 467 N.E.2d 448, 453 (Mass. 1985) (finding "that graduation ... can hardly be characterized as anything other than a change in placement."); 34 C.F.R. § 300.122(a)(3)(iii) ("Graduation from high school with a regular diploma constitutes a change in placement..."); 05-071-101 Code Me. R. § 5.11 ("Graduation is considered to be a change in placement...").

Nonetheless, Defendants argue that there has been no change in the status quo and

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parents from obtaining preliminary injunction that would have essentially overturned the hearing officer's stay put determination).

that Jesse's current placement is that he is a high school graduate. Quite simply, Defendant's argument "would render the stay-put provision meaningless because the school district could unilaterally graduate handicapped children." Cronin, 689 F. Supp. at 202 n.4 (explaining that when the issue ultimately before the court is whether a student was properly graduated, the student is entitled to remain in school under the stay put provision). The purpose of the IDEA is to prevent schools from excluding disabled children from receiving an adequate education. See Rowley, 458 U.S. at 179. A school can exclude disabled children through a variety of methods, such as by ignoring them, expelling them, suspending them or graduating them. Because graduation entails the transmission of a diploma and some measure of pomp and circumstance does not inoculate graduation from the possibility that it is simply another form of illegal exclusion. In fact, graduation is probably the most dire form of exclusion because it potentially renders a person ineligible for future educational aid under the IDEA. See 34 C.F.R. § 300.122(a)(3)(i); 05-071-101 Code Me. R. § 5.11; cf. 20 U.S.C. § 1415(k) (an educational agency may expel a disabled child usually for no longer than 10 days, no longer than 45 days at the maximum); 05-071-101 Code Me. R. § 1.3 ("The guarantee of equal educational opportunity entitles each student with a disability residing in the State, including students with disabilities who have been suspended or expelled, to be provided with a free appropriate public education...").

At the recommendation of the PET, EUT made the unilateral decision to graduate Jesse, against Plaintiffs' wishes. The fact that the hearing officer upheld EUT's decision does not change the fact that Defendants acted to change the status quo. Therefore, the burden is on Defendants to move for a preliminary injunction and to make the requisite

four-part showing. Defendants argue that Plaintiffs have failed to fulfill the four requirements for a preliminary injunction, but Defendants do not argue that they meet those requirements. Moreover, the record as it presently stands is inadequate to convince the Court that (1) Defendants are likely to succeed on the merits, (2) Defendants could suffer irreparable harm, (3) the balance of hardships favors Defendants, and that (4) preventing Jesse from attending Washington Academy is within the public interest.

Because Defendants have not made the requisite showing to overcome the strong preference for the preservation of the status quo, the stay put provision requires Defendants to allow Jesse to attend Washington Academy, according to the curriculum established in the 1999-2000 IEP, until either this case is resolved or Jesse is no longer eligible for benefits under the IDEA. See, e.g., 20 U.S.C. § 1412(a)(1); 20-A M.R.S.A. § 7001(2)(B); 05-071-101 Code Me. R. § 5.11 (student ineligible for IDEA benefits if she has reached the age of 20 years by the start of the school year).

## **B. Posting a Bond**

Defendants argue that if Plaintiffs are successful with their motion for preliminary injunction, the Court should require Plaintiffs to post a bond to cover any and all costs that Defendants may incur during the pendency of the litigation, pursuant to Fed. R. Civ. P. 65(c).

A few cases from other courts initially seem to support Defendants' demand for the posting of a bond. See Bd. of Educ. v. Illinois State Bd. of Educ., 10 F. Supp. 2d 971, 982 (N.D. Ill. 1998) (ordering preliminary injunction and ordering plaintiff parents to post nominal bond of ten dollars), vacated in part on other grounds, Bd. of Educ. v. Kelly

E., 207 F.3d 931, 938 (7<sup>th</sup> Cir. 1999); Stockton v. Barbour County Bd. of Educ., 884 F. Supp. 201, 208 (N.D. W. Va. 1995) (ordering plaintiff parents to post \$10,000 bond to obtain preliminary injunction); see also Stacey G. v. Pasadena Indep. Sch. Dist., 695 F.2d 949, 955 (5<sup>th</sup> Cir. 1983) (noting that, if defendant school district prevails on the merits, school district is entitled to recover upon the bond posted by plaintiff parents as precondition to district court granting preliminary injunction); Vander Malle v. Ambach, 673 F.2d 49, 50 n.2 (2<sup>nd</sup> Cir. 1982) (noting that district court ordered plaintiff parents to post \$15,000 bond).<sup>6</sup>

In most of these cases, however, the parents, rather than the school districts, had acted to alter the status quo. See Bd. of Educ., 10 F. Supp. 2d at 974, 982 (parents unilaterally placed child in private school then obtained preliminary injunction requiring government to pay the private school tuition); Stockton, 884 F. Supp. at 204, 208 (same); see also Stacey G., 695 F.2d at 951-52 (parents unilaterally placed child in private school). But see Vander Malle, 673 F.2d at 50-51 (state unilaterally withdrew funding from child's placement).

The Court sees no reason why the party seeking to maintain the status quo, in this case Plaintiffs, should post a bond. As discussed above, the party seeking to change the child's educational placement, Defendants, has the burden of making the four-part showing for a preliminary injunction to override the stay put provision. See Brookline, 722 F.2d at 917. Because the burden is on Defendants, it would be patently unfair to

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<sup>6</sup> Defendants cite Bd. of Educ. v. Illinois State Bd. of Educ., 79 F.3d 654 (7<sup>th</sup> Cir. 1996), which noted that if the defendant school district was trying to recover tuition funds, which it was not, it should have requested plaintiff parents to post a bond when the district court granted a stay put injunction. See id. at 659. This Court finds such hypothetical dicta unpersuasive.

require Plaintiffs to post a bond pursuant to Fed. R. Civ. P. 65(c). Therefore, Defendants' request for a bond is denied.

#### IV. CONCLUSION

For the reasons stated above, Plaintiffs' Motion for Preliminary Injunction is hereby GRANTED. It is hereby ordered that Defendants maintain Jesse Bell in his current educational placement at Washington Academy pursuant to 20 U.S.C. § 1415(j).

SO ORDERED.

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GEORGE Z. SINGAL  
United States District Judge

Dated this 16th day of October, 2000.

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    plaintiff

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(See above)  
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v.

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