

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAUREN W., BY AND THROUGH HER PARENTS Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
	:	
BOARD OF EDUCATION OF THE RADNOR TOWNSHIP SCHOOL DISTRICT	:	NO. 02-CV-4775

ORDER

AND NOW, this day of September, 2002, upon consideration of the Motion for Preliminary Injunction and Declaratory Relief of the Plaintiff, the Defendant Radnor Township School District's Answer to the Plaintiff's Complaint for Injunctive Relief with Affirmative Defenses, and upon full consideration of the testimony and arguments presented at the August 28, 2002 hearing, this court hereby enters the following findings of fact and conclusions of law in support of this court's previous Order granting the plaintiff's Motion for Preliminary Injunction and Declaratory Relief:

FINDINGS OF FACT

1. The plaintiff, Lauren W., resides within the Radnor Township School District ("the District"). Stipulation ¶ 2.
2. Lauren has been diagnosed as suffering from a variety of conditions including autism,

Attention Deficit Hyperactivity Disorder (“ADHD”), mood disorder, depression, non-convulsive seizure disorder, as well as visual-perceptual and temporal lobe impairment. Her condition results in difficulties in the behavioral, social, and academic spheres of her life. Transcript of Hearing 8-28-02, p. 26-27; Stipulation Exhibit D.

3. Lauren is entitled to a free and appropriate education (“FAPE”) pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.*, and the District is the local education agency responsible for providing a FAPE to Lauren. Stipulation ¶¶ 1, 2.
4. Lauren attended the Radnor Middle School during the 1998-1999 school year (while she was in 7th grade) pursuant to an Individual Education Program (“IEP”) providing learning support within the regular education environment (“1998 IEP”). Stipulation ¶ 3.
5. Prior to Lauren’s 8th grade year, the District proposed an IEP recommending that Lauren be placed in the Learning Support Program at Radnor Middle School for the 1999-2000 school year (“1999 IEP”). Stipulation ¶ 4.
6. On or about August 24, 1999, the attorney representing Lauren and her parents informed the District that Lauren’s parents disagreed with the proposed 1999 IEP. Stipulation ¶ 5.
7. Lauren’s parents unilaterally opted to place Lauren at the Hill Top Preparatory School (“Hill Top”), a private school located in Rosemont, Pennsylvania. Stipulation ¶ 6.
8. In August of 1999, Lauren’s parents requested a special education administrative due process hearing to resolve the appropriateness of the 1999 IEP and to address whether the District should be required to pay for Lauren’s Hill Top tuition and for compensatory education for Lauren for the 1999-2000 school year. Stipulation ¶ 7.

9. After the administrative hearing process to address the 1999 IEP commenced in November of 1999, the parties independently reached an agreement regarding the dispute. In 2000, the parties executed a Settlement Agreement (“the Agreement”), drafted by the District. The request for the continuation of the administrative hearing was withdrawn by the parties. Stipulation ¶ 8, Stipulation Exhibit B, C.
10. The Agreement provided, in pertinent part:
 - (a) that Lauren would attend Hill Top for the 1999-2000 school year and that the District would reimburse Lauren’s parents for the Hill Top tuition for Lauren the 1999-2000 school year;
 - (b) that the District’s reimbursement for Lauren’s tuition at Hill Top would not constitute “ratification, approval or endorsement of [Lauren’s] placement at Hill Top School”;
 - (c) that no pendency would attach Hill Top; and
 - (d) that Lauren’s parents would waive all rights they would otherwise have under all applicable laws, including the IDEA. Stipulation Exhibit C.
11. The Agreement by its terms is limited to the 1999-2000 school year. Stipulation Exhibit C.
12. The Agreement contemplated that the District would complete a new IEP for Lauren for the 2000-2001 school year. Stipulation Exhibit C.
13. The District conducted an evaluation of Lauren in July of 2000. At the start of the 2000-2001 school year, the District scheduled an IEP meeting for September of 2000 to address Lauren’s placement for the 2000-2001 school year. This meeting was cancelled to pursue settlement discussions. Stipulation ¶¶ 14, 15.
14. On November 14, 2000, the Board of School Directors for the Radnor Township School

- District, by a vote of eight to one, accepted a recommendation that Lauren continue to be placed at Hill Top, and approved payment of the tuition costs for Lauren's placement at Hill Top for the 2000-2001 school year. No conditions upon this approval are evident from the minutes of the meeting. Stipulation ¶ 20; Stipulation Exhibit D012.
15. Lauren continued to attend Hill Top during the 2000-2001 and 2001-2002 school years. The tuition for these two years was paid by her parents, who sought reimbursement from the District. Responsibility for these tuition costs is a subject of the currently ongoing administrative due process proceeding. The instant order does not apply to either the 2000-2001 or 2001-2002 tuition costs. Stipulation ¶ 17.
 16. Although the District prepared Settlement Agreements for both the 2000-2001 and 2001-2002 school years, and sought execution of both Agreements, these Agreements were never executed. Stipulation ¶¶ 18, 23, 24.
 17. The District did not prepare an IEP for Lauren for either the 2000-2001 or 2001-2002 school years. Stipulation ¶¶ 16, 23. The last effective IEP was the 1998 IEP, which applied to the 1998-1999 school year when Lauren was in seventh grade. Lauren is now beginning the eleventh grade.
 18. No explicit waivers were executed by the parties regarding the pendency status of Lauren's attending Hill Top during either the 2000-2001 or 2001-2002 school years.
 19. On May 28, 2002, the District proposed an IEP for Lauren for the 2002-2003 school year ("the 2002 IEP") which provided that Lauren would enroll in an emotional support class at Radnor High School. Stipulation ¶ 27.
 20. Lauren's parents objected to the 2002 IEP and sought an expedited hearing. Stipulation ¶

28. The first session of the hearing was held on July 22, 2002, and the second session was conducted on August 2, 2002. Stipulation ¶¶ 29. Additional sessions have been scheduled for September. Lauren's parents also sought an expedited adjudication of Lauren's "pendent placement" pursuant to § 1415(j) of IDEA. Stipulation ¶¶ 30.
21. The parties have stipulated that the administrative due process hearing will not be concluded prior to September 1, 2002, at which time the Hill Top tuition is due. Stipulation ¶¶ 30, 32.
22. Lauren's parents are unable to pay Lauren's tuition at Hill Top for the upcoming 2002-2003 school year. Transcript of Hearing 8-28-02, p. 16, 18.
23. On July 18 2002, Lauren's parents filed an action in this court on behalf of Lauren petitioning for a declaratory judgment that Hill Top is Lauren's "pendent placement" pursuant to § 1415(j), and seeking injunctive relief requiring the District to fund Lauren's educational placement at Hill Top until the dispute over the 2002 Academic Placement is resolved. Complaint p. 10.

CONCLUSIONS OF LAW

1. This action involves claims for declaratory and injunctive relief pursuant to § 1415(j), which provides, in pertinent part: "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." 20 U.S.C. § 1415(j).
2. The parties do not dispute that the issues presented here will not be resolved through the

- expedited administrative due process hearing proceedings prior to September 1, 2002.
3. Regarding the injunctive relief sought in this action, it is well established that the usual requirements for an injunction to issue do not apply to the present case because § 1415(j) of the IDEA functions as an automatic preliminary injunction. Drinker v. Colonial School District, 78 F.3d 859, 864 (3d. Cir. 1996). There is no dispute that Lauren is covered under the IDEA. As a result, she is entitled to the injunctive protection of § 1415(j).
 4. The relevant issues here are (1) the identification of the “current educational placement” of Lauren, and (2) the identification of who should pay for it. Id. at 865.
 5. “[W]here a parent unilaterally removes a child from an existing placement determined in accordance with state procedures, and puts the child in a different placement that was not assigned through proper state procedures, the protections of the stay-put provision are inoperative until the state or local educational authorities and the parents agree on a new placement.” Michael C. ex rel. Stephen C. v. Radnor Tp. School Dist., 202 F.3d 642, 651 (3d Cir. 2000) (citing Susquenita Sch. Dist. v. Raelee S., 96 F.3d 78, 83 (3d Cir.1996)). “Once state authorities and parents have reached such agreement . . . a ‘then-current educational placement’ come[s] into existence.” Id.
 6. The Agreement between the parties executed in 2000 regarding Lauren’s attending Hill Top for the 1999-2000 school year does not constitute an agreement between the District and Lauren’s parents as to Lauren’s placement for purposes of § 1415(j) because Lauren’s parents expressly waived their right to claim Hill Top as Lauren’s “current educational placement” during the 1999-2000 school year under the terms of the Agreement.

7. However, because the Agreement was limited by its terms to the 1999-2000 school year, it does not constitute a waiver by Lauren's parents of their right to claim Hill Top as Lauren's "current educational placement" at any time subsequent to the 1999-2000 school year. Drinker, 78 F.3d at 868 (holding that any waiver of a party's right to claim a certain placement as the "current educational placement" for a child must be explicit).
8. Here, subsequent to the executed Agreement regarding the 1999-2000 school year, the District and Lauren's parents agreed that Hill Top was an appropriate placement for Lauren for the 2000-2001 school year as demonstrated by the facts that (1) Lauren's parents continued to enroll Lauren at Hill Top, and (2) the Board of School Directors for the Radnor Township School District voted eight-to-one to continue Lauren's placement at Hill Top and to pay for Lauren's tuition costs at Hill Top for the 2000-2001 school year. Although the parties did not enter into a written contract regarding Lauren's placement after the 1999-2000 school year, and although the District refused to pay Lauren's tuition at Hill Top for the 2000-2001 and 2001-2002 school years, the parties' agreement as to Hill Top being an appropriate placement for Lauren for the 2000-2001 school year compels this court to conclude that Hill Top became Lauren's "then-current educational placement" as of the 2000-2001 school year pursuant to § 1415(j). Michael C., 202 F.3d at 651 (citing Susquenita, 96 F.3d at 83); see Matthew K. v. Parkland School Dist., 1998 WL 84009, 6 (E.D.Pa.,1998) (holding that a school district itself can change pendency by agreeing to a private school placement initiated unilaterally by a disabled child's parents); Bayonne Bd. of Educ. v. R.S. by K.S., 954 F.Supp. 933, 943 (D.N.J.,1997) (holding that where a school district board agrees to a student's placement

at a private school, that school becomes the appropriate pendant placement for purposes of the IDEA's "stay put" provision).

9. Because Hill Top is Lauren's "current educational placement" pursuant to § 1415(j) of the IDEA, she is entitled to remain at Hill Top during the pendency of the ongoing administrative due process proceeding.
10. As to the identification of who should pay for Lauren's "current educational placement," it is well established in this Circuit that "once there is state agreement with respect to pendent placement, *a fortiori*, financial responsibility on the part of the local school district follows." Susquenita, 96 F.3d at 84. It is further well established that "the policies underlying the IDEA and its administrative process favor imposing financial responsibility upon the local school district as soon as there has been an administrative panel or judicial decision establishing the pendent placement." Id. The purpose of the Act, which is to ensure that every child receive a "free and appropriate education," would not be advanced by a judicial decree that although Hill Top is Lauren's "current educational placement," Lauren's parents must, nonetheless, "front the funds" for Lauren's continued placement at Hill Top during the pendency of the administrative due process hearing. See id. at 86-87. Without interim financial support, the decision of parents to have their child remain in what the local education authorities have agreed is an appropriate private school placement amounts to no choice at all. See id. at 87. "The prospect of reimbursement at the end of the litigation turnpike is of little consolation to a parent who cannot pay the toll at the outset." Id.
11. Thus, the District is obligated to pay Lauren's tuition for Hill Top during the pendency of

the proceedings to determine the appropriateness of the proposed 2002 IEP.

12. The District's argument that Lauren must post a bond in order to be entitled to the injunctive relief she requests is rejected because Drinker clearly establishes that the "usual prerequisites to injunction relief" are displaced by the "stay put" provisions of the IDEA. Id. at 864.

We reiterate our Order of August 30, 2002 with slight modifications. It is hereby **ORDERED** that the plaintiff's Motion for Preliminary Injunction and Declaratory Relief is **GRANTED**:

1. Hill Top is Lauren's "current educational placement" for purposes of § 1415(j) of the IDEA.
2. Lauren is entitled to remain at Hill Top during the pendency of the ongoing administrative due process proceeding, and the District is enjoined from changing this placement during the pendency of the ongoing administrative due process proceeding.
3. The District's financial obligations with respect to the pendent placement for academic year 2002-2003 are immediate. The District is ordered to pay Lauren's tuition to attend Hill Top during the pendency of the administrative due process proceeding to determine appropriateness of the IEP offered to Lauren for the 2002-2003 school year.
4. The District's request that the Plaintiff's parents post a bond in the amount of \$22,000 is hereby **DENIED**.

BY THE COURT:

Legrome D. Davis, Judge