

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CLAYTON GREAVES,
SHANNON GREAVES,
and JOSHUA GREAVES,
a minor,

Plaintiffs,

v.

STOUGHTON AREA SCHOOL
DISTRICT, DR. MYRON PALOMBA,
individually and in his official capacity,
and DR. KURT SCHNEIDER,
individually and in his official capacity,

Defendants.

ORDER

05-C-0102-C

A hearing was held in this case on February 24, 2005, before United States District Judge Barbara B. Crabb on plaintiffs' motion for a preliminary injunction, requiring defendants to continue to allow Lori Schaeffer to come into the school that Joshua Greaves attends and provide therapy services for him for 4-6 hours a week. Schaeffer is employed by Integrated Development Services to provide services to Joshua pursuant to the Children's Long Term Support Medicaid Home and Community-based Services Waiver.

Plaintiffs appeared by Francis Sullivan. Plaintiffs Clayton Greaves and Shannon Greaves appeared in person. Defendants appeared by Joanne Harmon Curry and David Rohrer. Defendant Kurt Schneider appeared in person.

After hearing argument from counsel, I denied plaintiffs' motion for a preliminary injunction because plaintiffs have not exhausted the administrative remedies available to them under the Individuals with Disabilities Education Act and state law, Wis. Stat. ch. 115. Plaintiff's addition of a claim for relief under 42 U.S.C. § 1983 to their claim under the IDEA does not relieve them of their exhaustion obligation. Charlie F. v. Board of Education of Skokie School Dist. 68, 98 F.3d 989, 991 (7th Cir. 1996) (IDEA does not limit relief available under other laws but does require persons seeking kind of relief that is available under IDEA to exhaust their remedies). The requirement's purpose is to allow education professionals the first opportunity to "formulate a plan to overcome the consequences of educational shortfalls." Id. at 992.

Barring plaintiffs from proceeding in this court before they have exhausted their administrative remedies does not mean that they cannot obtain an order maintaining the status quo. The state of Wisconsin has created an administrative review procedure, under which the administrative tribunal of the Department of Public Instruction may issue the equivalent of a preliminary injunction in the form of a "stay put" order. 20 U.S.C. § 1415(j) (keeping child in "then current educational placement" while state proceedings are

conducted).

After I had denied plaintiffs' motion for a preliminary injunction on the ground that their suit in this court is premature, defendants moved to dismiss this case. The motion was granted. Plaintiffs are free to return to court if they are aggrieved by the results of the administrative process. 20 U.S.C. § 1415(i)(2)(A).

ORDER

IT IS ORDERED that the motion for a preliminary injunction filed by plaintiffs Clayton Greaves, Shannon Greaves and Joshua Greaves is DENIED; the motion to dismiss the case made orally on behalf of defendants Stoughton Area School District, Dr. Myron Palomba and Dr. Kurt Schneider is GRANTED. The clerk of court is directed to enter judgment for defendants and close this case.

Entered this 25th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge