

120 LRP 21447

**J.C., a person with a disability, et al.,  
Plaintiffs, v. Jon FERNANDEZ, in his  
official capacity as Superintendent, Guam  
Department of Education, Defendant**

**U.S. District Court, Guam**

20-00024

**July 15, 2020**

### **Related Index Numbers**

**370.050 Injunctions**

**390.027 Stay-Put**

**Judge / Administrative Officer**

**FRANCES M. TYDINGCO-GATEWOOD**

### **Ruling**

The U.S. District Court, District of Guam ruled that five students with disabilities were not entitled to a preliminary injunction requiring the Guam Education Department to implement their IEP services during state-mandated school closures due to the COVID-19 pandemic. The court denied the students' motion for injunctive relief without prejudice.

### **Meaning**

It's unclear whether school closures related to the COVID-19 pandemic constitute a change in placement triggering the IDEA's stay-put provision. If a district facing stay-put claims has concerns about the safety of in-school instruction, it may present evidence showing that in-person instruction may place the student's health at risk. Here, the Guam ED pointed out that IDEA-eligible students affected by coronavirus-related school closures aren't necessarily entitled to a stay-put order. This persuaded the court that it needed additional evidence to determine whether the students' need for in-person services outweighed the SEA's interest in protecting the health of the school community.

### **Case Summary**

Five students with disabilities failed to establish that they would suffer irreparable harm without an injunctive order requiring the Guam Education

Department to continue their in-person IEP services while schools remain closed during the COVID-19 pandemic, a U.S. District Court held. It denied the students' motion for a temporary mandatory injunction. The court explained that to obtain a preliminary injunction, the students had to demonstrate that: 1) they are likely to succeed on the merits; 2) they are likely to suffer irreparable harm in the absence of the preliminary relief; 3) the balance of equities tips in their favor; and 4) a preliminary injunction is in the public interest. In this case, the court noted, the students failed to present substantial evidence that they needed four hours of daily in-school educational services, including assistance from a specialized paraprofessional, for four weeks during the summer to avoid irreparable harm. Additionally, the court could not determine whether the students were likely to succeed on the merits of their claim. It pointed out that the students based their request for a temporary injunction on the assumption that they were entitled to stay-put protections under the IDEA. However, it is unclear whether the coronavirus-related school closures constitute a change in educational placement triggering stay-put, the court opined. Citing *N.D. v. State of Hawaii, Department of Education*, 54 IDELR 111 (9th Cir. 2010), the court noted that "Congress did not intend for the IDEA to apply to system wide administrative decisions." Concluding that it would need "a clear[er] picture of the situation" to grant injunctive relief, the court denied the students' motion. Nonetheless, the court suggested that the students could file another motion for a preliminary injunction with supporting evidence before July 24, 2020.

### **Full Text**

#### **APPEARANCES**

For J.C., a person with a disability, A.B., a person with a disability, M.B., a person with a disability, J.B., a person with a disability, E.Q., a person with a disability, Plaintiffs: Daniel Seth Somerfleck, Guam Legal Services, Hagatna, GU.

For Jon Fernandez, in his official capacity as

Superintendent, Guam Department of Education,  
Defendant: Jesse J.N. Nasis, LEAD ATTORNEY,  
Guam Department of Education, Barrigada, GU.

Judges: Frances M. Tydingco-Gatewood, Chief  
United States District Judge.

Opinion by: Frances M. Tydingco-Gatewood

## Opinion

### Order denying motion for a temporary mandatory injunction

Before the Court is Plaintiffs' motion for a temporary mandatory injunction and an order to show cause why a preliminary injunction should not issue. Plaintiffs seek an order mandating that the Guam Department of Education ("GDOE") provide the services specified in their current Individualized Educations Plans ("IEPs"), including four hours of daily in-school educational services for four weeks during the summer break, with the assistance of a specialized para-educator for each student. In order to obtain a preliminary injunction, Plaintiffs must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest. *N.D. ex rel. Guard. ad Litem v. HI Dept. of Educ.*, 600 F.3d 1104, 1111 (2010).

In evaluating Plaintiffs' present motion, the Court finds *N.D. v. Dept. of Educ.* particularly instructive. Unlike in *N.D.*, where the district court had before it "declarations by [the plaintiffs' parents] ... detailing the injuries their children had suffered... [and] declarations outlining the steps [the school district was] taking to minimize the disruption that the [shutdowns] were causing," 600 F.3d at 1112, here the Court has no substantial evidence before it regarding irreparable harm. Instead, the Court is faced only with counsel's argument that a failure to implement the IEPs in their entirety constitutes per se irreparable harm. See ECF 2 at 4.

This argument is akin to the argument made by the plaintiffs in *N.D.* that the issuance of a stay-put

injunction should be automatic without requiring the usual preliminary injunction showing. See 600 F.3d at 1112. The Ninth Circuit rejected this argument because, as here, "[t]he preliminary injunction would order the DOE to recognize the invocation of the stay-put provisions. The alleged violation is that [the State] is not providing the protection of the stay-put provision. The claim underlying the preliminary injunction is that the stay-put provision applies. In essence, the preliminary injunction is an injunction for an injunction." *Id.* In the absence of further evidence, the Court is unpersuaded that Plaintiffs have met their burden of showing irreparable harm in the absence of preliminary relief.

With respect to Plaintiffs' likelihood of success on the merits, similar to *N.D.*, "[t]he heart of the case is whether the [school shutdowns under Executive Order 2020-16] are a change in the educational placement of the disabled children such that the stay-put provisions apply." 600 F.3d at 1113. The *N.D.* court noted that "Congress did not intend for the IDEA to apply to system wide administrative decisions." *Id.* at 1116. Although there are some potentially distinguishing characteristics in this case, the Court has serious questions whether *N.D.* nonetheless dictates the outcome here. Plaintiffs' motion does not address this question, but rather assumes that the stay-put provisions apply in arguing for a temporary injunction.

With respect to the remaining two factors for consideration--the balance of equities and the public interest--the Court notes that Defendant's opposition demonstrates the existence of drastically different views of the facts underlying Plaintiffs' motion, which the present record is insufficient to resolve. A clear picture of the situation, as necessary to warrant the extraordinary remedy of a mandatory injunction, will only be available after both parties have had the opportunity to fully brief the issues and submit any evidence they wish to have considered. Accordingly, Defendant's motion for a temporary mandatory injunction is DENIED. Defendant's request for an order to show cause why a preliminary injunction

should not issue is DENIED on the same basis. This denial is without prejudice to Plaintiffs' filing a properly noticed motion for a preliminary injunction, including any evidence Plaintiffs wish to have considered in support of that motion. Any such motion shall be filed no later than July 24, 2020.

SO ORDERED.

/s/ Frances M. Tydingco-Gatewood

Chief Judge

Dated: Jul 15, 2020

**Cases Cited**

600 F.3d 110454 IDELR 111 -- Followed