

STATE OF NEW HAMPSHIRE  
STATE DEPARTMENT OF EDUCATION

IDPH FY 08-07-04 / Oyster River Cooperative School District

**JOINT MOTION FOR SUMMARY JUDGMENT**

The parties stipulate as follows:

1. Student is a minor. ... parents and legal guardians are ... and ...
2. Student resides with ... parents in the Oyster River Cooperative School District.
3. Student qualifies as a child with a disability under the federal Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400, et seq., and New Hampshire's corresponding special education laws, due to (a disability).
4. For the summer of 2007, the school district offered Student an extended school year (ESY) program consisting of: a) a social skills program at Learning Skills Academy, a private day school in Rye, New Hampshire, that is approved for special education by the New Hampshire Department of Education; and b) a pre-employment skills program operated by Strafford Learning Center, a regional special education consortium.
5. Student's parents unilaterally placed ... for the summer of 2007 at the ... summer program located in City, Other State, operated by the (Name) Association of Retarded Citizens,
6. The ... summer program is not approved by the Other State Department

of Education as a special education school. However, many Other State school districts place special education students there.

7. The ... summer program focuses on social skills and operates more days during the summer than Learning Skills Academy's program does.

8. The ... summer program that Student attended for the summer of 2007 operated from July 2, 2007 to August 10, 2007, five days per week.

9. The parties agreed at the May 16, 2007 IEP team meeting that the Student required extended school year programming over the summer of 2007 to work on social, regulation, coping and sensory skills.

10. The parties agree that the ... summer program was the only appropriate extended school year programming over the summer of 2007 to work on social, regulation, program for Student for the summer of 2007, because: a) it was superior to Learning Skills Academy's program in intensity and duration; and b) social skills should be the priority for the Student's summer program.

11. The school district maintains that it cannot fund Student's attendance at ...'s summer program without a N.H. Department of Education hearing officer's order directing the school district to reimburse the parents for a unilateral placement there. This is because New Hampshire law forbids a school district from placing a student at an out-of-state program that is not approved for special education by the host state's department of education. State law allows a hearing officer to order a school district to reimburse parents for a unilateral placement at an unapproved out-of-state school when that placement is appropriate and the district failed to offer an appropriate placement.

12. The parties jointly requested a due process hearing with the N.H. Department of Education seeking an order directing the school district to reimburse the parents for Student's

unilateral placement at ...summer program for the summer of 2007.

13. The school district has agreed to pay ...summer program directly for Student's attendance there on five days - July 13, 20, and 27, and August 3 and 10, 2007 - because on those days ... summer program provided services that qualified for direct school district funding under the law. In addition, the school district provided transportation from home to ... summer program and back 20 and 27, and August 3, 2007. The parents declined the school district's offer to transport Student on August 10, 2007.

WHEREFORE the parties request that the hearing officer order the following:

A. That the school district reimburse Mother and Father tuition for Student's unilateral placement at the ... summer program for the summer of 2007 in the amount of \$3,450 (three thousand four hundred fifty dollars).

B. On days when the ... summer program provided services that qualified for direct school district funding under New Hampshire's law - specifically July 13,20 and 27, and August 3 and 10,2007 - the school district shall have the option to pay ... summer program directly for such services. Any payments the school district makes to ... under this paragraph shall be deducted from payments the school district must make to the parents under paragraph A.

C. The school district shall reimburse the parents, at the standard IRS-approved rate (48.5 cents per mile), plus tolls, for transportation the parents provided to drive Student from home to ...'s summer program and back, two round trips per day, during the period July 10, 2007 through August 10, 2007.

Date 8/13/07

STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

In Re: IDPH-FY-08-07-004 / Oyster River Cooperative School District

**ORDER ON MOTION FOR SUMMARY JUDGMENT**

The parties submitted a Joint Motion for Summary Judgment on August 13, 2007. The relief requested in Paragraphs A, B, and C is granted and the Motion for Summary Judgment is granted.

**SO ORDERED.**

Dated: August 14, 2007  
John P. LeBrun, Esquire  
Hearing Officer