

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

IDPH FY-07-04-062 / Timberlane Regional School District

ORDER ON ASSENTED-TO MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This due process proceeding was initiated on May 4, 2007 by the parents of [] ("Student") regarding reimbursement from the Timberlane Regional School District for Student's continued placement at [out-of-state private school]. A hearing was scheduled for June 18 and 19, 2007, with an end date of July 9, 2007.

On May 7, 2007, the parties submitted an Assented-To Motion For Summary Judgment, accompanied by an agreed-upon statement of facts.

FACTS

The parties' Agreed Upon Statement Of Facts, dated May 2, 2007, is incorporated herein by reference. Findings of fact are made in accordance therewith.

DISCUSSION

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A fact is material when it affects the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

As the undisputed facts in this case demonstrate, Student is a special education student with a specific learning disability. Student will be entering senior year in September of 2007. After continued research of alternative day programs, and reviewing Student's success in the out-of-state program, the team has determined that the out-of-state private school can meet Student's unique educational needs in the least restrictive environment. Although the out-of-state private school is not approved by the host state as a special education facility, there is no other placement alternative which can provide this student with a free appropriate public education.

Every educationally handicapped student is entitled to a free appropriate public education ("FAPE") which is reasonably calculated to meet the student's unique needs. *E.g.*, Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982). When FAPE has not been made available by the local educational agency and a parental placement is subsequently determined to be appropriate, the parent may be reimbursed for expenditures relative to the private placement. School Committee of Burlington v. Department of Education of Massachusetts, 471 U.S. 359 (1985).

Further, a Hearing Officer may find a parental placement to be appropriate even if that placement does not meet the state standards that apply to the local educational agency, and may require the school district to reimburse the parents for that placement. 20 U.S.C. §1412fa)(10)(C); 34 C.F.R. §300.403(c); Ed 1132.02 (b)(2); Florence County School District Four v. Carter, 510 U.S.7 (1993).

Where, as here, the parties agree as to the unique educational needs of the Student and the appropriate placement to meet those needs, it is proper to conclude that there is no genuine issue of fact in dispute, and that summary judgment should be awarded. *Cf Student./Littleton School District*, IDPH FY-03-08-02 (NH Dept. of Ed. 2002).

CONCLUSION AND ORDER

For the reasons set forth above, the parties' motion for summary judgment is granted.

The Timberlane School District shall reimburse the parents in the amount of four thousand, nine hundred twenty-three dollars (\$4,923.00) per month for the period of time from September 1, 2007 through June 30, 2008 for Student's attendance at the out-of-state private school. The District may make these payments in monthly installments directly to the school, which shall credit those payments toward the amount the parents owe for the 2007-2008 school year.

So ordered.

Date: June 28, 2007

Amy B. Davidson, Hearing Officer