

STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

Student/... Cooperative School District

IDPH-FY-09-09-011

ORDER ON JOINT MOTION FOR SUMMARY JUDGMENT

The District requested an impartial due process hearing on September 15, 2008. The issue for hearing was placement. Student has been identified as an individual with educational disabilities under 20 U.S.C. §§ 1401, et.seq and NH RSA 186-C, specifically Asperger's Syndrome on the Autism Spectrum. The parties participated in mediation sessions on September 30th and October 15, 2008. Through mediation the Parties agreed on an IEP that required placement for Student in a twelve-month residential program. The District proposed placement for student at the .. School in Massachusetts, a state approved residential special education school. Parent rejected the placement as inappropriate to meet student's unique needs. On November 12, 2008, Parent unilaterally placed student at the ... School ...

The Parties held a telephonic pre-hearing conference on December 30, 2008 and a hearing on January 12, 2009.

DISCUSSION

The Parties filed a Joint Motion for Summary Judgment on December 29, 2008. 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 judgment as a matter of law." Fed. R.Civ.P.56(c); Celotex Corp. v. Catrett, 477 U.S. 317, 322(1986). Every educationally handicapped child is entitled "to a free appropriate public education (FAPE), which is reasonably calculated to meet his unique needs." Board of Education of Hendrick Hudson School Dist. V. Rowley, 458 U.S. 176 (1982). The Parties agree, in this matter, that the District failed to offer an appropriate placement for the student (FAPE).

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 Comm. of Burlington v. Dept. of Educ. of MA, 471 U.S. 359 (1985). 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. § 1412 (a)(10)(C); 34 C.F.R. §300.403(c); NH Ed 1132.02 (b)(2); Florence County School District Four, et al. v. Carter, 510 U.S. 7 (1993).

The Parties agree that the ... School is an appropriate placement for student, even though it does not meet the New Hampshire State standards that apply to the local educational agency.

The State of ... does not maintain a list of approved special education schools. The District submitted documentation indicating that the ... School is a [State] approved... Scholarship program school, a program that authorizes [State] parents to apply for a scholarship to send their special needs child to a private school if they are dissatisfied with the student's progress in the local public school.

At hearing, the Parties provided documentation and testimony regarding the following:

1. A Second Statement of Agreed Upon Facts including a detailed list of the schools the Parties considered for Student and why those schools were determined not to be *appropriate for Student*;
2. An affidavit from the Admissions Director at the ... School indicating that the school is "designed for students... who are experiencing academic difficulties due to learning disabilities or attention deficit." She further states the school is accredited by the [State] Council of Independent Schools ... and the Southern Association of Colleges and Schools. (SACS). There are currently 25 students enrolled at the ... School with Student's identified disability.

In their proposed Order on Joint Motion for Summary Judgment the parties indicate that Student requires "counseling on a regular and as needed basis, staff that are trained in working with students that need support with social skills deficits, small academic ratios and a program that is specifically designed for students with Asperger's Disorder." The proposed order further states that "Student is high functioning academically and requires a program that can both challenge him academically and support the development of appropriate social skills."

At hearing, the Parties stated their belief that the ... School could implement Student's IEP and that Student would receive related services in counseling and occupational therapy as well as support from a behavioral consultant.

ORDER

- A. The Joint Motion for Summary Judgment is granted.
- B. The District shall reimburse the Parent for any amount the Parent has paid to the ... School for tuition, room and board and/or shall pay directly to the ... School any amount remaining due for tuition, room and board.
- C. The District shall pay the ... School directly for additional services provided to Student as required by the Student's IEP, including driver's education and vocational training.
- D. The District shall provide Student with an internet-accessible laptop computer as required by Student's IEP.
- E. The District shall reimburse the Parent, at the standard IRS-approved rate (currently .55 cents/mile) for Student's travel home and back when he is required by the school to leave the premises.
- F. The ... School is Student's current educational placement under the stay-put provisions of the IDEA and the District is ordered to pay tuition, room and board for student until Student no longer qualifies for special education services or an IEP is approved that no longer requires the services of the ... School, whichever occurs first.

SO ORDERED, this 13th day of January, 2009.

Joni S. Reynolds, Hearing Officer