

THE STATE OF NEW HAMPSHIRE
DEPARTMENT OF EDUCATION

**Student/Chester School District
IDPH-FY-10-06-047**

ORDER ON MOTION FOR SUMMARY JUDGMENT

This due process proceeding was initiated by the Chester School District (“District”) on June 8, 2010. Initially, the issue was whether the District was entitled conduct, over Parent’s objection, a three-year evaluation of [] (“Student”) as proposed in its March 8, 2010 Evaluation Plan. At the June 22, 2010 prehearing conference, the Parent agreed to the evaluation but not to the proposed evaluators. Thus, the issue for due process became whether the District was entitled to use its own evaluators for the three-year evaluation.

At the prehearing conference, The District filed a Motion for Summary Judgment with supporting documents. Subsequently, the District submitted an addendum to its motion which addressed the new, narrower issue. Parent’s response was filed on or about June 28, 2010, in a document entitled “Motion Summary Statement”. The parties were also given an opportunity to present their respective positions orally on the record at the hearing on July 1, 2010.

Summary judgment is appropriate where no genuine issue of material fact is present, and the moving party is entitled to a judgment as a matter of law. RSA 491:8-a. In this case, there is no factual dispute as to the qualifications of the examiners selected by the District to conduct the evaluations. Parent’s only objection to the proposed examiners was based upon her belief that the examiners’ possible future involvement in a “[]” concerning Student and a [] teacher would render the testing unfair. These are matters of speculation. The law is clear – the District has the right to conduct this evaluation with evaluators of its choice. The proposed examiners are qualified, and there is no legally sufficient basis to find otherwise. Further, there is recourse for parents who are dissatisfied with school district evaluations.

Accordingly, the District’s Motion for Summary Judgment is granted. The District may conduct reevaluations of Student as set forth in its March 8, 2010 Evaluation Plan and request.

APPEAL RIGHTS

If either party is aggrieved by the decision of the hearing officer as stated above, either party may appeal this decision to a court of competent jurisdiction. The Parent has the right to obtain a transcription of the proceedings from the Department of Education. The School District shall promptly notify the Commissioner of Education if either party, Parent or School District, seeks judicial review of the hearing officer's decision

So ordered.

Date: July 13, 2010

Amy B. Davidson, Hearing Officer