

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

IDPH-FY-10-05-045 /Jaffrey-Rindge Cooperative School District

ORDER ON JOINT MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This due process proceeding was initiated on June 1, 2010 by the Jaffrey-Rindge Cooperative School District relative to its proposed IEP and placement for Student. A prehearing conference was scheduled for June 15, 2010, and the hearing was scheduled for June 24 and 25, 2010, with an end date of July 9, 2010.

The prehearing conference was held on June 15, 2010, and a Prehearing Conference Report was issued on June 19, 2010. At the prehearing conference, the parties submitted a Joint Motion for Summary Judgment.

II. FACTS

The parties agree on the following facts, which are set forth in their Joint Motion for Summary Judgment and are found by the hearing officer:

- 1) Student was born on [REDACTED].
- 2) Student qualifies for special education under the federal Individuals with Disabilities Education Act (IDEA) due to [REDACTED].
- 3) Student currently attends [REDACTED], a public school operated by the School District. [REDACTED]. Student is not currently receiving any other educational services from the School District.
- 4) On March 4, 2010, the School District's IEP team offered Student the following special education and related services for the period March 22, 2010 to March 21, 2011:
 - (a) a placement at [REDACTED]; and
 - (b) an individualized education program (IEP) to be implemented at [REDACTED].
- 5) Student's parents, [REDACTED], denied consent for that IEP and placement.
- 6) On May 28, 2010, the School District filed a complaint with the New Hampshire Department of Education seeking a due process hearing under the IDEA. The hearing request seeks a determination that the proposed IEP and placement are appropriate and may be implemented.
- 7) [REDACTED]
- 8) In response to the School District's hearing request, the parents invoked their right under the IDEA, 20 U.S.C. § 1414(a)(1)(D)(ii), and the U.S. Department of Education's implementing regulations, 34 C.F.R. § 300.300(b)(4), to opt out of special education. Specifically, they revoked their consent for the School District to continue to provide special education and related services to Student under the IDEA.
- 9) The parties have entered into a settlement agreement which confirms that the parents are opting out of special education on Student's behalf. A copy of that settlement agreement has been filed with the hearing officer.¹

[REDACTED]

III. DISCUSSION

¹ The parties do not seek hearing officer approval of their Settlement Agreement, and nothing herein should be construed as granting such approval.

Summary judgment is appropriate if the pleadings and other documents on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The agreed-upon facts in this case demonstrate that the parents have opted out of special education, which bars the pending request for a due process hearing. Even if the parents did not opt out of special education, a hearing officer could only determine that the IEP and placement offered by the School District are appropriate and could not force Student's parents or legal guardian to take advantage of those services. [REDACTED]

IV. CONCLUSION AND ORDER

Student's parents have validly opted out of special education pursuant to 34 C.F.R. 300.300(b)(4). [REDACTED]. Consequently, a due process hearing on the School District's proposed IEP and placement is barred by 34 C.F.R. § 300.300(b)(4)(ii), and the School District's due process request must be dismissed.

The parties' joint motion for summary judgment is granted. This resolves the issues for due process, and the case is now concluded.

So ordered.

Date: June 19, 2010

Amy B. Davidson, Hearing Officer