

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**Student/Timberlane Regional School District
IDPH-FY-12-12-020**

ORDER ON MOTION FOR SUMMARY JUDGMENT

BACKGROUND

This due process proceeding was initiated by the Timberlane Regional School District relative to the proposed IEP and placement for the 2011-2012 school year. The first prehearing conference was held on January 23, 2012; Student's father and legal guardian was unable to attend, and his counsel, Attorney Louis Piccone, did not appear and could not be reached.

A second prehearing conference was held on March 9, 2012. This was a rescheduling per the Parent's request, to a date agreed upon by the parties. Neither the Parent nor his counsel attended. The previous evening at 11:06 p.m., an e-mail was received by the Department from Attorney Piccone. Attorney Piccone advised that he would not attend the prehearing conference and would be requesting a continuance. That request was denied. The March 19, 2012 prehearing conference order provided that the District would file a motion for summary judgment by March 26, 2012, and the Parents counsel would have fourteen days to respond. New hearing dates of May 1 and 3, 2012 and a decision date of May 18, 2012 were established in the event that summary judgment was denied.

The District filed a timely motion for summary judgment; Parent filed no response. On April 18, 2012, via e-mail, Parent's counsel advised that he had "not been easily able to find the time period" to respond to the District's motion and requested a two-week extension to do so. That request was denied.

DISCUSSION

The sole issue in this case is whether the proposed IEP and placement for the 2011-2012 school year are appropriate. Student had been placed by the District at Crotched Mountain School until July of 2011. At that time, she was removed from the school by her father and legal guardian. The District's position is that the proposed 2011-2012 IEP, which called for placement at Crotched Mountain, is reasonably calculated to provide the Student with educational benefits in the least restrictive environment.

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Progressive Northern Insurance Company v. Argonaut Insurance Company*, 161 N.H. 778 (2011). The party opposing the motion must do more than simply dispute the facts alleged in the moving

party's motion and supporting affidavits; s/he must set forth specific facts demonstrating the existence of a genuine issue for hearing. See Southern New Hampshire Mental Health and Developmental Services, Inc. v. Cannell, 134 N.H. 519 (1991).

The affidavits and other supporting documents submitted by the District establish that Student has significant and complex disabilities; that her team agreed upon an IEP and placement at Crotched Mountain School; that Student benefited from her IEPs and placement there and that this placement should continue for the 2011-2012 school year. The facts set forth in the District's motion are amply supported and undisputed.

ORDER

In light of the above, the District's motion for summary judgment is **granted**.

So ordered.

Date: April 23, 2012

Amy B. Davidson, Hearing Officer