

STATE OF NEW HAMPSHIRE

STUDENT/LIN-WOOD SCHOOL DISTRICT

IDPH-FY-13-05-041

ORDER

Upon review of the Agreed Statement of Facts and the Joint Motion for Summary Judgment, it is ordered as follows:

1. The Joint Motion for Summary Judgment is granted.
2. The Lin-Wood School District will reimburse the Student/Parent for tuition, room and board, and all other costs imposed by [REDACTED] for Student's placement in that program.
3. The School District and Student/Parent request that the School District be permitted to fulfill its reimbursement obligation by making the School District's payments directly and in a timely manner to [REDACTED], said payments to be credited to the account of the Parent for the education of the Student.

Date 6/19/13

  
John LeBrun, Hearing Officer

STATE OF NEW HAMPSHIRE

STUDENT/LIN-WOOD SCHOOL DISTRICT

IDPH-FY-

JOINT MOTION FOR SUMMARY JUDGMENT

The Lin-Wood School District, by its attorney, Barbara F. Loughman, and the Student/Parent, move for summary judgment in this matter based on the attached Joint Statement of Facts, there being no genuine issue as to any material fact. Under these circumstances, summary judgment is appropriate as a matter of law. The School District and the Student/Parent assent to the entry of summary judgment in accordance with the terms of the proposed order.

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file together with affidavits, if any, show 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. A material fact "is one that might affect the outcome of the suit under the governing law." United States v. One Parcel of Real Property with Buildings, 960 F 2d, 200 (1<sup>st</sup> Cir. 1992), quoting Anderson v. Liberty Lobby Inc. Inc., 477 U.S. 242 (1998).

The enclosed Joint Statement of Facts indicates there are no genuine issues as to any material facts.

Every student with a disability is entitled to a free appropriate public education reasonably calculated to meet his or her unique needs. Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 16 (1982). A parent may be reimbursed for expenditures for a unilateral private placement. School Committee of Burlington v. Department of Education of

Massachusetts, 471 U.S. 359 (1985). A private placement does not have to be in an approved school, in order to qualify for reimbursement. Florence County School District Four at et. al. v. Carter, 114 S. Ct. 361(1993). A hearing officer may find a parental placement to be appropriate even if that placement does not meet the applicable State standards and may require the school district to pay for that placement. Florence, supra.

The IEP team has investigated a number of possible placements, but was unable to agree on an appropriate approved program for Student. The parties now agree that no available approved program would provide Student with FAPE, at this time, but that [REDACTED] which is an unapproved program, can provide [REDACTED] FAPE and implement [REDACTED] IEP appropriately.

The School District and the Student/Parent respectfully request that the Hearing Officer grant this Motion for Summary Judgment in order that certain costs associated with Student's placement at [REDACTED] be reimbursed by the School District as follows:

1. The Lin-Wood School District will reimburse the Student/Parent for tuition, room and board, and all other costs imposed by [REDACTED] for Student's placement in that program until Student's 21<sup>st</sup> birthday.
2. The School District and Student/Parent request that the School District be permitted to fulfill its reimbursement obligation by making the School District's payments directly and in a timely manner to [REDACTED] said payments to be credited to the account of the Student for [REDACTED] education.

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IDPH-FY-

AGREED STATEMENT OF FACTS

Now come the parties and agree to the following statement of facts:

1. Student is [REDACTED] years old. [REDACTED] IDEA identifications are autism and emotional handicap. [REDACTED] has been in school-based residential programs since [REDACTED] approximately [REDACTED] years of age. [REDACTED] attended the [REDACTED] [REDACTED] NH and then was court placed at [REDACTED] and [REDACTED] NH and [REDACTED] and [REDACTED], ME.
2. In all of these placements, Student has been closely supervised by staff at all times with intense behavioral support by counselors and behavior specialists.
3. Student will need one-to-one supervision until [REDACTED] is 21 years old.
4. Student's team has been searching for adult living and socialization options for [REDACTED] to provide ongoing stability and to ensure that [REDACTED] may function safely and successfully as an adult.
5. The team has determined that it would be best for Student to return to New Hampshire with supports in place in order to move to a less

restrictive environment and access supports by [REDACTED] and Vocational Rehabilitation by the time [REDACTED] is 21 years old.

6. The parties have considered a number of possible placements for the Student, including returning to [REDACTED] in an effort to find a mutually agreed upon appropriate placement for Student. The team also checked into a number of other approved programs.

7. None of the foregoing programs are appropriate for Student at this time.

8. The parties now agree that no available placement in an approved program would provide student with FAPE at this time, but that [REDACTED] is an appropriate program for Student. [REDACTED] is a supported residential care program. It is a less restrictive setting than the residential programs Student has lived in for the past several years and can provide Student with FAPE and implement [REDACTED] IEP appropriately.

Respectfully submitted,

Lin-Wood School District  
By its Attorneys,  
Soule, Leslie, Kidder,  
Sayward & Loughman  
Barbara F. Loughman

6/9/13

Date \_\_\_\_\_

Date 5/31/13

