

THE STATE OF NEW HAMPSHIRE DEPARTMENT OF EDUCATION
IDPH FY -05-12-034./ Keene School District

ORDER ON ASSENTED-TO MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This is a due process proceeding initiated on December 2, 2004 by the parent of student regarding the responsibility of the Keene School District ("District") to provide student with a placement at Eagle Mountain School in Greenfield, Massachusetts for the 2004-2005 school year.

A prehearing conference was scheduled for December 16, 2004, and the hearing was scheduled for January 3 and 6, 2005, with an end date of January 16, 2005. On December 15, 2004, the parties notified the Hearing Officer that they expected to submit an assented-to motion for summary judgement, and that the prehearing conference would not be necessary. It was agreed that, if deemed necessary, the prehearing conference would be rescheduled to January 3, 2005.

On December 28, 2004, the parties filed an Assented To Motion for Summary Judgment, with Assented To Stipulation of Facts in support thereof. An Addendum to Assented To Motion for Summary Judgment was filed on January 4, 2005.

II. FACTS

The following facts are agreed upon by the parties, and are found by the Hearing Officer:

1. student is a child classified under the Individuals with Disabilities Education Act (IDEA) as a child with a health impairment based on a diagnosed non-verbal learning disability.
2. Student was placed at the Fuller Elementary School ... for the 2003-2004 school year. ... had a successful year in a mainstreamed classroom with an individual tutor (aide) and related service of Occupational Therapy.
3. Student's primary academic issues are math and written expression and pragmatic language combined with some social skills deficits, anxiety and depression.
4. Student is vulnerable to and has had a history of being bullied. ... lack of defenses against bullying and the resulting emotional damage has been a significant factor in determining an appropriate placement.
5. Due to the complexity of the building, high levels of commotion and the large number of students, the IEP/Placement team had ruled out the Keene Middle School as a viable placement prior to beginning the placement search.
6. In the early spring of 2004, the team, including the parent, believed that the

Westmoreland School , a public K-8 school within SAU #29 would be an appropriate placement for student, because its size and enrollment are small and it is reasonably close to student's home

7. In early June of 2004, the Westmoreland School formally informed the District that it would not accept student as a tuition student. Efforts to have the decision reconsidered were fruitless.

8. An IEP/Placement Team meeting was held on June 24, 2004 at the Parent's request. Although the most desired outcome was reconsideration by the Westmoreland School with acceptance of placement, the following schools were to be researched: Monadnock Waldorf School in Keene ; the Field School in Antrim; and the Eagle Mountain School in Greenfield , Massachusetts . Other possible schools mentioned were the White Oak School and the Greenfield Center School in Westfield and Greenfield , Massachusetts , respectively; the Well School , Mountain Shadow School and the Pine Hill Waldorf School in Peterborough , Dublin and Wilton , New Hampshire , respectively.

9. An IEP/Placement team meeting was held on July 15,2004 as a follow-up to the June 24, 2004 meeting. The Field School and the Eagle Mountain School remained as two placement options. The Special Education Coordinator suggested St. Joseph School as another possible alternative. Plans were made to continue with contacting these schools and arranging for visits. With the exception of Eagle Mountain School , these placements were not found to be viable options.

10. A third IEP/Placement team meeting was convened on August 31,2004 . The Parent had chosen the Eagle Mountain School and the District agreed that this school was at this time the only school that was appropriate and available for student.

11. Student began attending Eagle Mountain School on September 8, 2004 To date, that placement has been highly successful, and meets student's unique educational needs.

12. When student was placed at Eagle Mountain School , to the best of the District's knowledge, this facility was not approved as a special education school in the Commonwealth of Massachusetts . The Parent and the District have recently learned that the school is currently approved by the Massachusetts Department of Education as a special education placement.

III. DISCUSSION

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 a judgment as a matter of law." Celotex Corp. v. Catrett, 477 US . 317,322 (1986). A fact is material when it affects the outcome of the case. Anderson v. Liberty Lobby. Inc., 477 US . 242,248 (1986).

As the undisputed facts in this case demonstrate, student is a special education student with deficits in learning and social skills, among other things. After investigating many possible options, the District's IEP/Placement Team determined that the Eagle Mountain

School was the only viable option. This student's needs are being met at Eagle Mountain , and it can and does provide an appropriate individualized program, including implementing the agreed-upon IEP. Although at the time student was placed at Eagle Mountain it was not approved by the Commonwealth of Massachusetts as a special education facility, there was no other placement alternative which could have provided student with a free appropriate public education (FAPE).

Every educationally handicapped student is entitled to a FAPE, which is reasonably calculated to meet his unique needs. *E.g., Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 US. 176 (1982). 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.

V. APPEAL RIGHTS

If either party is aggrieved by the decision of the Hearing Officer set forth above, either party may appeal this decision to the court of appropriate jurisdiction. The parent has the right to obtain a transcription of the proceedings from the Department of Education. The District shall Notify the Commissioner of Education when either the District or the parent seeks judicial review of the decision.

School Committee of Burlington v. Department of Education of Massachusetts, 471 US. 359 (1985). Further, 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. §1412fa)(1O)(C); 34 C.F.R. §300.403(c); Ed 1132.02 (b)(2); *Florence County School District Four v. Carter*, 510 US . 7 (1993).

Where, as here, the parties agree as to the unique educational needs of the child and the appropriate placement to meet those needs, it is proper to conclude that there is no genuine issue of fact in dispute, and that summary judgment should be awarded. *Cf Student/Littleton School District , IDPH FY-03-08-02 (NH Dept. of Ed. 2002).*

IV. ORDERS

In accordance with the above, the following is ordered:

A. The Assented-to Motion for Summary Judgment is granted, to include any period of time during which the Eagle Mountain School in Greenfield , Massachusetts was not an approved special education placement;

B. Student's placement at the Eagle Mountain School for the 2004-2005 school year will be publically funded as follows:

1) The Keene School District shall reimburse the Parent for tuition and/or any registration she has paid to Eagle Mountain School thus far;

2) The District will provide transportation to and from the Eagle Mountain school:

3) The District will continue to fund student's tuition at Eagle Mountain School for the remainder of the 2004-2005 school year.

VI. STATEMENT OF COMPLIANCE WITH Ed 1128.22(b)

If neither party appeals this decision to a court, then the District shall, within 90 days, provide to the Commissioner of Education and to the Hearing Officer, a written report describing the implementation of this decision, and provide a copy to the parents. If the parents do not concur with the District's report, the parents shall submit their own report to the

Commissioner of Education.

So ordered.

Date: January 14,2005

Amy B. Davidson, Hearing Officer