

THE STATE OF NEW HAMPSHIRE

State Board of Education
IDPH-FY-06-02-049 / Middleton School District

RULING ON MOTION TO DISMISS

Pursuant to the Prehearing Order in this matter, the parents filed a timely objection to the Motion to Dismiss which involves three areas, to wit, reimbursement for unilateral placement, extended school years (ESY), and payment for the cost of an independent evaluation. These will be discussed below.

Statute of Limitations Regarding Unilateral Placement . The parents agree that the unilateral placement began on September 6, 2005, in their response to the Motion to Dismiss with respect to the unilateral placements the parents indicate that they did not receive a certain attachment referenced in the Motion to Dismiss but instead received the Procedural Safeguards Handbook for Special Education, June 2004. That document at Page 47 clearly sets forth the ninety (90) day statute of limitation for unilateral placement. There is no disagreement that the request for reimbursement for the unilateral placement was made more than ninety (90) days after September 6, 2005 and as such the Motion to Dismiss with respect to the parents request for reimbursement for the unilateral placement at WACC is granted.

ESY . The District argues that ESY is properly to be considered in April of any school year and that the request for ESY as well as compensatory education for failure to provide ESY is not ripe for adjudication in that it was prematurely made. The Hearing Officer agrees and the Motion to Dismiss the request for ESY is granted.

Payment for Independent Educational Evaluation . The School District directly points out that if a parent requests an independent educational evaluation of public expense the School District must either initiate a due process hearing or ensure that an independent educational evaluation is provided at public expense. Here, the parents position is that as far back as October 24, 2005, the parents executed an educational Disabilities Diagnostic Decision Forum wherein they took exception and attached exceptions asking that adaptive behavior testing be undertaken as they were told that it did not apply to three year olds and they later were informed that the adaptive behavior testing did apply to three year olds and that they wanted it to occur. It is also clear that the District did not request a due process hearing on or about October 24, 2005 . As such, the Motion to Dismiss the request for payment for an independent evaluation with respect to the adaptive behavior testing is denied.

SO ORDER.

Dated: 4/21/2006

John LeBrun, Hearing Officer