

STATE OF NEW HAMSHIRE  
DEPARTMENT OF EDUCATION  
IDPH-FY-06-05-058

ASSENTED TO MOTION FOR SUMMARY

The parties to this matter, by and through their counsel, hereby move for summary judgment in this matter, based upon the attached Agreed Statement of Facts and the fact that there is no genuine issue as to any material fact. Under these circumstances summary judgment is appropriate as a matter of law. This motion has been assented to by counsel for the school district.

The essential standard for consideration of a motion for Summary Judgment is spelled, out

in the Federal Rules of Civil Procedure, at FRCP 56. The rule provides that

The judgment sought shall be rendered forthwith if the pleadings, depositions show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law

In the case at hand, the attached Agreed Statement of Facts indicates that there is no

genuine issue as to any material fact.

With respect to the law, Summary Judgment is appropriate because every student with a

disability is entitled to a free appropriate education. See Individuals with Disabilities Education

Improvement Act of 2004, 20 USC 1400 et. seq. United States Supreme Court law interpreting

the IDEA, the predecessor to the IDEIA, including Florence County School District Four et. al v Carter,

114 S. Ct. 361 (1993) 20 IDELR 532 has addressed and settled the question of

whether parents may be reimbursed for a placement made to a school which is not "approved" by

the state for the provision of special education if that school is otherwise proper for the student.

The answer is that parents may be reimbursed in such a situation. See generally pages 2, 3 and 4

of Carter in pdf.

In this case the Agreed Statement of Facts makes it clear that no appropriate placement

other than the school was located for the student, and therefore there was no way the student could have received a Free Appropriate Public Education had ... parents not placed ... at the school. It is also clear that the student's needs are being met at the school, and that the school is an appropriate placement. The parties agree that the school can provide an appropriate and individualized education which will meet the student's needs.

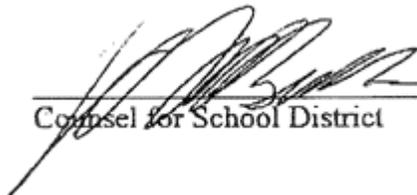
The Parents respectfully request that the Hearing Officer grant the Motion for Summary

Judgment and order that the costs associated with the Student's placement at the school be funded as set forth in other documents submitted under this case.

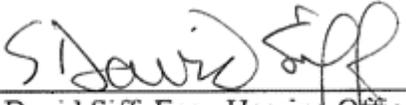
Counsel for Parents

Date 9/14/06

Date 9/15/06

  
Counsel for School District

SO ORDERED

  
S. David Siff, Esq., Hearing Officer

9-22-06

Date