

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF EDUCATION

IDPH-FY-07-09-016 / **Keene School District**

ORDER ON JOINT MOTION FOR SUMMARY JUDGMENT

**INTRODUCTION**

The Keene School District (District) and the Parents, on behalf of the Student, through their respective counsel, have submitted a Joint Motion for Summary Judgment in this matter. In support of their motion, the parties have submitted a Joint Statement of Facts, which is incorporated herein.

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. 65. A material fact "is one that might affect the outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1998). Upon due consideration of the agreed-upon facts in this case, together with the parties' Joint Motion for Summary Judgment, I conclude that there is no genuine issue of material fact, and that therefore summary judgment is appropriate.

**DISCUSSION**

The Individuals With Disabilities Education Improvement Act (IDEIA) guarantees to a disabled student a free appropriate public education (FAPE) reasonably calculated to meet his or her unique needs. 20 USC 1400 *et. seq.*; Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 16 (1982); Florence County School District Four et. al. v. Carter, 114 S. Ct 361 (1993) 20 IDELR 532, 534. A unilateral placement by a parent need not involve an approved school in order to qualify for reimbursement. *Id.* A parent may be reimbursed for expenditures relative to a unilateral private placement. 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. 34 CFR 300.403(0); Ed. 1132.02(b)(2); Carter, supra.

In this case, the District's IEP Team has investigated many possible placements, all of which were deemed to be inappropriate. The District believes that the local middle school could meet the Student's needs, but recognizes that, for reasons outlined in the Joint Statement of Facts, Parents are not invested in the local program.

Student attended an out-of-state, private residential school ("private school") during the summer of 2006 and received educational benefit. Student has continued at this private school at parent expense for the 2006-2007 school year, and continues to

receive educational benefit. Although this private school is not an approved special education placement, the parties agree that the Student's unique educational needs are being met. Student's IEP can be implemented, and will be revised and modified as necessary.

## **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) District shall reimburse the parents for the following costs of Student's educational program at the private school for the 2006-2007 school year: The cost of the day student tuition rate for the 2006-2007 school year, the cost for agreed-upon related services as set forth in the IEP and not covered by the day student tuition rate, the cost for room and board for the 2006-2007 school year and registration fees.
- 3) Said total costs are not to exceed \$46,885.00 for the 2006-2007 school year.
- 4) Said costs are to be reimbursed per month for each full month Student is enrolled at the private school. The Parents will be reimbursed within 30 days for tuition, registration fees and room and board that have already been paid to the private school for the 2006-2007 school year.
- 5) Said reimbursements are conditioned on Student's actual attendance at the private school on the months and days for which reimbursement is sought, and Student and Parents continuing to be residents of the Keene School District and the District continuing to be the legally liable school district in this matter.
- 6) The private school shall not be considered a stay-put placement for Student.
- 7) This Order is in place for the 2006-2007 school year; decisions with regard to placement for the 2007-2008 school year will follow the IEP/placement process for 2007-2008 school year.
- 8) This order for reimbursement is limited to the above specified costs.

So ordered.

Date: November 10, 2006

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Amy B. Davidson, Hearing Officer