

THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

IDPH-FY-08-08-11 / Chesterfield School District

DECISION ON JOINT MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This due process proceeding was initiated on August 10, 2007 by the parents of [] (“Student”), relative to reimbursement for Student’s placement at the [out-of-state private school]. A prehearing conference was scheduled for September 10, 2007, and the hearing was scheduled for September 26 and 27, 2007, with an end date of October 19, 2007.

On August 17, 2007, the parties submitted a Joint Motion for Summary Judgment, with an Agreed Statement of Facts in support thereof.

II. FACTS

The parties’ Agreed Statement of Facts, attached and incorporated as part of this Order, contains twenty-eight (28) proposed facts, all of which are found by the Hearing Officer.

III. DISCUSSION

Summary judgment is appropriate if the pleadings and other documents on file show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317 (1986). The agreed-upon facts in this case demonstrate that existing programs in the School District are unable to provide Student with a free appropriate public education (“FAPE”) for the summer of 2007 or for the 2007-2008 school year. Further, the School District has been unable to locate an appropriate in-state program or an appropriate, accredited out-of-state program that will meet Student’s unique educational needs. The out-of-state private school can continue to provide Student with a FAPE and can meet Student’s unique needs as set forth in the IEP.

When a FAPE is not made available by the local school district, and a parental placement is subsequently deemed to be appropriate, the parent may be reimbursed for expenditures relative to the private placement. School Committee of Burlington v. Department of Education of Massachusetts, 471 U.S. 359 (1985). Further, a Hearing Officer may order reimbursement even when the private school does not meet the state standards that apply to the local educational agency. Florence County Country School District Four v. Carter, 510 U.S. 7 (1993).

Where, as here, there is no dispute as to the unique educational needs of the student and the appropriate placement to meet those needs, it is proper to conclude that there is no genuine issue of material fact and that summary judgment should be awarded.

IV. CONCLUSION

In accordance with the above, the parties' joint motion for summary judgment is granted. This resolves the issues for due process, and the case is now concluded.

V. ORDER

The parties have submitted a proposed order, to which they assent. The proposed order is adopted in its entirety, and is incorporated herein as part of this Decision.

So ordered.

Date: August 27, 2007

Amy B. Davidson, Hearing Officer