

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

**Re: Student/Keene School District
IDPH-FY-14-04-028**

ORDER ON ASSENTED TO MOTION FOR SUMMARY JUDGMENT

The parties submitted an Assented to Motion for Summary Judgment dated May 14, 2014. The parties also submitted an Agreed upon Statement of Facts. The facts agreed upon by the parties are incorporated hereby. The Assented to Motion for Summary Judgment is granted as to Prayers for Relief Numbers 2 and 3 only. The Assented to Motion for Summary Judgment and the Agreed upon Statement of Facts are affixed to this Order.

SO ORDERED:

Dated: May 20, 2014

John P. LeBrun, Esquire
Hearing Officer

STATE OF NEW HAMPSHIRE
STATE DEPARTMENT OF EDUCATION

██████████/Keene School District

IDPH-FY-14-04-028

ASSENTED TO MOTION FOR SUMMARY JUDGMENT

Now comes the Keene School District (the District), by and through its attorneys, and moves for summary judgment based on the Agreed Statement of Facts signed by the parties in this case. ██████████, the parents of ██████████, assent to this motion for summary judgment.

In support of this motion, the parties submit that the Agreed Statement of Facts demonstrates that ██████████ IEP cannot be implemented effectively at Keene High School (KHS), which is a local high school. ██████████ has been attending the ██████████ in ██████████ since the summer of 2013 and has made effective progress there. The parties agree that ██████████ is the only appropriate placement for ██████████. Accordingly, the Individuals with Disabilities Education (IDEA) requires that ██████████ be placed at ██████████ to meet ██████████ unique educational needs and to receive a free appropriate public education (FAPE). *See, e.g., Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 478 U.S. 176 (1982) (under IDEA, child is entitled to FAPE which is reasonably calculated to meet his unique needs).

Summary judgment is appropriate if “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Fed. R. Civ. P. 56(c)*; *see also Bedford Sch. Dist.*, 106 LRP 56217, IDPH-FY-04-09-13 (N.H. Dep’t of Educ., October 27,

2003) (recognizing summary judgment as appropriate where parties file an assented to motion for summary judgment and no dispute of facts).

Ordinarily, a school district may not place a student at an unapproved school. *See N.H. Admin. R. Ed 1126.03*. However, where, as here, there is no appropriate approved program, the IDEA permits a parent to seek reimbursement for a unilateral placement at an unapproved school. *Florence County Sch. Dist., v. Carter*, 510 U.S. 7 (1993). The New Hampshire Board of Education's regulations echo *Carter* by allowing a school district to obtain catastrophic aid from the State whenever a hearing officer orders the district to reimburse parents for a unilateral placement, even when that placement is an unapproved school. Ed 1132.02(b)(2).

Here, it is undisputed that [REDACTED] current IEP cannot be effectively implemented at [REDACTED] local school, KHS. It is also undisputed that [REDACTED] made effective progress both academically and socially since attending [REDACTED]. Prior to [REDACTED] had been unable to make progress in the District's program. The parties agree that [REDACTED] is the only appropriate placement for [REDACTED] and that removing [REDACTED] from this placement would be detrimental to [REDACTED] education. Although [REDACTED] is not approved [REDACTED] as a special education school, it is nonetheless appropriate to meet [REDACTED] educational needs. Moreover, the parties agree that they have been unable to locate any other school which could provide [REDACTED] with FAPE. Under these circumstances, an order of reimbursement is appropriate. *See e.g., Carter*, 510 U.S. 7; *Bedford Sch. Dist.*, 106 LRP 56217, IDPH-FY-04-09-13 (N.H. Dep't of Educ., October 27, 2003).

In the spring of 2013, the parents filed a due process hearing request seeking placement at [REDACTED] for the 2013-14 school year. *See IDPH-FY-13-05-038(B)*. The District did not contest this placement, as it agreed that [REDACTED] was the appropriate placement for [REDACTED] and

that [REDACTED] placement at KHS had not been successful. The hearing officer in that matter issued an order on June 30, 2013 granting the parties' request for tuition reimbursement for [REDACTED] placement at [REDACTED]. See Attached Exhibit 1. [REDACTED] has made progress at [REDACTED] is completing [REDACTED] ninth grade year at [REDACTED], which [REDACTED] had been unable to do at KHS.

[REDACTED] requires a consistent educational program. Therefore, the parties request that the hearing officer issue an order of reimbursement for the remainder of [REDACTED] high school program. The parties request that the hearing officer issue an order permitting the District to reimburse the parents for tuition at [REDACTED], semi-annually, at the tuition rate set by [REDACTED], for the following school years: 2014-15, 2015-16, and 2016-17. The parties further request that the hearing officer issue an order permitting the District reimburse the parents for the speech language services provided by [REDACTED], which [REDACTED] requires in order to benefit from [REDACTED] educational program. The parties agree that the District's obligation to reimburse the parents under the hearing officer's order will be contingent on [REDACTED] residing within the geographic boundaries of the Keene School District. Should the parents move out of the Keene School District at any point during the next three years, the District will cease being financially responsible for the Student's educational program [REDACTED].

Alternatively, the parties request that the hearing officer issue an order of reimbursement for the 2014-15 school year and for speech language services for the 2014-15 school year.

WHEREFORE, the parties request that the hearing officer issue the following order:

1. The Keene School District shall reimburse [REDACTED] for tuition at [REDACTED] for the 2014-15, 2015-16, and 2016-17 school years and the speech language services provided by [REDACTED], at the rates set by [REDACTED],

provided that [REDACTED] continue to reside within the geographic boundaries of the Keene School District during this time.

2. Alternatively, the Keene School District shall reimburse [REDACTED] for tuition at [REDACTED] in the amount of \$ [REDACTED] semi-annually, for the 2014-15 school year. The Keene School District shall reimburse [REDACTED] speech language services provided by [REDACTED] in the amount of \$ [REDACTED] provided that [REDACTED] continue to reside within the geographic boundaries of the Keene School District during this time.

3. That the order allow the Keene School District to make those payments directly to [REDACTED] School, which shall credit those payments toward the amount the parents owe for [REDACTED] educational program [REDACTED].

Respectfully Submitted,

KEENE SCHOOL DISTRICT
By and through its attorneys,
DRUMMOND WOODSUM

May 14, 2014

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THE STATE OF NEW HAMPSHIRE

DEPARTMENT OF EDUCATION

**Student/Keene School District
IDPH-FY-13-05-038(B)**

ORDER CLOSING CASE (GRANTING JOINT MOTION FOR SUMMARY JUDGMENT)

This due process proceeding was initiated on May 22, 2013 by the parents relative to the IEP and placement. A prehearing conference was scheduled for June 12, 2013, and the hearing was scheduled for June 27 and July 1, 2013, with a decision date of July 24, 2013.

The District submitted an Assented-to Motion for Summary Judgment, together with an agreed-upon statement of facts, signed by all parties.

The facts as agreed upon by the parties are found by the hearing officer and incorporated herein.

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. (citations omitted).

Accordingly, the following is ordered, as requested by the parties:

- A. The Keene School District shall reimburse the Parents, [], for tuition at [] School in the amount of \$[], semi-annually, for the 2013-2014 school year.
- B. The Keene School District shall reimburse Parents for []'s 2013 extended year program at [] in the amount of \$[].
- C. The Keene School District is allowed to make the above payments directly to the [] School. The [] School shall credit those payments toward the amount the Parents owe for the 2013 extended school year program and the 2013-2014 school year.

This resolves the issues for due process, and the case is now concluded.

So ordered.

Date: June 20, 2013

Amy B. Davidson, Hearing Officer