



The University of the State of New York

The State Education Department
State Review Officer
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No. 09-061

**Application of the BOARD OF EDUCATION OF THE
PENFIELD CENTRAL SCHOOL DISTRICT for review of a
determination of a hearing officer relating to the provision of
educational services to a student with a disability**

Appearances:

Harris Beach, PLLC, attorney for petitioner, David W. Oakes, Esq., of counsel

DECISION

Petitioner (the district) appeals from a decision of an impartial hearing officer which ordered the district to conclude its search for a residential placement for the parents' (respondents') son within 45 days from the date of the decision. In the event the district was unable to locate an appropriate placement within 45 days, the district was ordered to place the student at the Judge Rotenberg Center (JRC) for the remainder of the 2008-09 school year. The appeal must be sustained.

The student's eligibility for special education services as a student with autism is not in dispute in this proceeding (see 34 C.F.R. § 300.8[c][1]; 8 NYCRR 200.1[zz][1]). According to the district, the student is receiving home instruction (Pet. ¶ 18; see Tr. pp. 100-05, 128, 171-72).

In a due process complaint notice dated January 28, 2009, the parents requested an impartial hearing and sought residential placement of the student at JRC for the remainder of the 2008-09 school year (Dist. Ex. 1). Following a resolution session, the parties executed a "partial resolution agreement" in February 2009 wherein the parties agreed, among other things, that the student required a residential placement and that the district would contact in-State and out-of-State residential facilities to determine whether such facilities may be an appropriate placement for the student (Dist. Ex. 4). The hearing record shows that the district began pursuing potential residential facilities in February 2009, sending inquiries to various in-State and out-of-State residential placements (Tr. pp. 108-19; Dist. Exs. 38-45; 47-52).

An impartial hearing was held on March 16, 2009 (Tr. p. 1). At the time of the impartial hearing, the student had not been accepted to any in-State residential facility (IHO Decision at p. 7). During the impartial hearing, the district requested additional time to identify an appropriate

residential placement, while the parents sought the student's immediate placement at JRC (id.; see Tr. pp. 17-19, 21). The impartial hearing officer issued a decision dated April 20, 2009, wherein he ordered the district to conclude its search for a residential placement for the student within 45 days from the date of his decision (IHO Decision at p. 13). In the event that the district could not locate an appropriate residential placement within 45 days, the impartial hearing officer directed the district to place the student at JRC for the remainder of the 2008-09 school year (id.).

The district appeals. The district's sole argument on appeal is that the impartial hearing officer erred in failing to provide the district with a longer time period for concluding its efforts to locate an appropriate residential placement for the student. According to the district, the student's mother has advised the district that she has informed JRC that she does not intend to place the student at JRC for summer 2009 and that she will not consider placing the student at JRC prior to September 2009 (Pet. ¶ 36). The district requests that the order of the impartial hearing officer be modified "to provide that placement not be made at JRC but that the District shall continue to pursue its efforts to find an appropriate residential placement and that the parties shall continue to cooperate in those efforts, including with respect to interviews/observations at the Center for Discovery, [a State-approved private school] and that placement at JRC not be made unless the District has not found an appropriate SED-approved residential placement through its efforts by August 31, 2009" (Pet. at p. 5; see 8 NYCRR 200.1[d], 200.7).

The parents have not filed an answer to the petition in this matter. The student's mother advised the Office of State Review by telephone on June 22, 2009 that she did not wish to submit an answer to the petition because she was in agreement with the district's petition. A June 22, 2009 letter from the Office of State Review to the parties confirmed receipt of the student's mother's telephone call and her stated agreement with the petition. No subsequent contact with the Office of State Review has occurred.

Because there is no dispute between the parties and both parties have agreed to the district's requested remedy, I find no reason under these circumstances to deny the district's request.

THE APPEAL IS SUSTAINED.

IT IS ORDERED that impartial hearing officer's decision dated April 20, 2009 is modified to provide that the district shall continue to pursue its efforts to find an appropriate residential placement and that the parties shall continue to cooperate in those efforts, including with respect to interviews/observations at the Center for Discovery, and that placement at the Judge Rotenberg Center be made commencing September 2009 unless the district has found another appropriate State-approved residential placement by August 31, 2009.

**Dated: Albany, New York
June 29, 2009**

**PAUL F. KELLY
STATE REVIEW OFFICER**