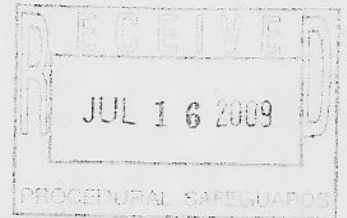


BEFORE THE OHIO DEPARTMENT OF EDUCATION
OFFICE OF EXCEPTIONAL CHILDREN

IN RE: SE: 2299-2009E
[REDACTED]



:
:
: Hearing Officer: Warner

DECISION

The undersigned Impartial Hearing Officer appointed to this matter, Linda R. Warner, heard this matter by stipulation and joint statements of facts presented by the parties.

Courtney Wilson, Esq., represented Winton Woods City School District

Monica Burgi, Esq., of Ohio Legal Rights Services represented Student and Parents.

Winton Woods City Schools filed a Request for Due Process Hearing on May 18, 2009. At the hearing conference on June 16, 2009 the parties jointly stipulated the following facts:

1. Student is 18 years old and has Autism diagnosis with obsessive compulsive disorder. As a result, Student is eligible for special education and related services.
2. Student resides with parents within the Winton Woods City School District. Parents obtained legal guardianship of Student from Hamilton County Probate Court on April 23, 2009.
3. Parents wish to continue Student's education rather than accepting a diploma and seeking adult services.
4. Student attended Winton Woods City Schools in March 2007. After attending the high school he was on home instruction, participated in the autism Scholarship Program, was temporarily placed at Children's Hospital, North college Hill, and most recently has been placed at Damarr pursuant to Emergency Interim Order dated May 22, 2009.
5. Pursuant to a mental health referral, physician for Student and MRDD determined that Student requires a residential placement for 9-12 months.
6. Winton Woods City Schools made inquires and pursued several leads to obtain therapeutic residential placement for Student. Winton Woods City Schools sought placement in facilities located in the state of Ohio. All inquires have been unsuccessful, and Student has not been accepted into any non-profit residential treatment center in Ohio. At present, Winton Woods City Schools has exhausted all leads for placement of Student in Ohio.

7. Winton Woods City Schools, MRDD, Parent and attorney for Parent and Student have identified Damar Services Inc. as an appropriate placement for Student. Damar Services Inc., located in Indiana is a residential treatment center for the treatment of autistic with the staff and facilities to accommodate Student's emotional and disability needs. All parties agree that Damar Services Inc. is an appropriate placement which would provide Student a FAPE.
8. The parties agree that MRDD will pay the residential portion of Damar Services Inc.
9. The parties agree all procedural safeguards and notice provisions have been to date.

LEGAL CONCLUSIONS

1. A child with a disability has the right to a free and appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA or the Act) and Ohio law. (20 U.S.C. Section 14129(a) (1) (A); ORC 3323.02.
2. Under Ohio law, if at the time an individualized education program is developed for a child a school district is not providing special education and related services required by that individualized education program, the school district may arrange by contract with a nonpublic entity for the provision of the special education and related services, provided the special education and related services meet the standards for special education and related services established by the state board and is provided within the state. ORC 3323.08(B) (3).
3. Under federal law, if a child needs a residential placement the district must provide that placement. If a district cannot locate an appropriate residential placement within the state, the student would need to be placed out of the state in order to provide the child FAPE. 34 C.F.R. 300.104.
4. ORC 3323.08(B) (3) is inconsistent with federal statute and regulatory law in that it mandates a contrary response where no in-state placement exists for a child. A contrary result would frustrate the purpose of IDEA and the companion state law, and would prevent Student from accessing educational opportunities.

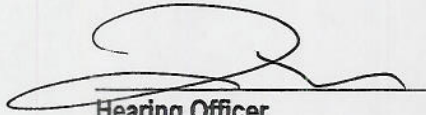
FINDINGS

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1. Student requires a therapeutic residential placement for 9-12 Months in order to benefit from his educational program.
2. A state-wide search by the District to find a placement appropriate for Student has been exhausted, and the Student remains without a placement for the 2009-2010 school year.
3. Damar Services Inc. can meet both the Student's mental health and educational needs.

ORDER

The District is hereby ordered and authorized to enroll Student at Damar Services Inc. Immediately through the 2009-2010 school year. Winton Woods City Schools shall bear the educational costs of the placement. MRDD shall bear the Residential costs of said placement.



Hearing Officer
Linda R. Warner

Date: 6/18/09

Copies to:
Counsel for the student
Counsel for Winton Woods City Schools

**NOTICE OF OPPORTUNITY TO APPEAL DECISION OF IMPARTIAL HEARING OFFICER
OR BRING CIVIL ACTION TO APPEAL STATE LEVEL DECISION**

1. **Appeal Right After Hearing Decision:** If you are not satisfied with the findings and decision of the impartial hearing officer, you may appeal the decision, in writing, to the Ohio Department of Education within forty-five (45) days of receipt of the hearing decision, under Revised Code Section 3323.05(H) and Rule 3301-51-05(K)(14)(b) of the Administrative Code (*Operating Standards for Ohio Educational Agencies Serving Children with Disabilities*).

Notice of appeal: If you appeal, you must file a Notice of Appeal that sets forth the order appealed and the grounds of your appeal. You must file:

- (a) The **original** Notice of Appeal with the Ohio Department of Education:

Ohio Department of Education
Office for Exceptional Children
Procedural Safeguards Section
25 South Front Street, Mail Stop #202
Columbus, Ohio 43215-4183

- (b) A copy of your Notice of Appeal with the other party to the due process whom your appeal is brought against.

Upon receipt of your appeal, the Ohio Department of Education will appoint a state level review officer to review the decision you are appealing from and issue a final decision in the review.

2. **Appeal Right after State Level Review Decision:** If you are not satisfied with the findings and decision of the state level review officer, you have the right to bring a civil action to appeal the decision, in writing, under Revised Code Section 3323.05(H) and Rule 3301-51-05(K)(17). You may file your civil action:

- a. In the court of common pleas of the county in which the child's school district of residence is located within 45 days of notification of the order of the state level review officer, under Chapter 119. of the Revised Code, as specified in Revised Code Section 3323.05(H).

OR

- b. In a district court of the United States within 90 days from the date of the decision of the state level review officer regardless of the amount in controversy, as specified in 20 U.S.C. 1415(i)(2) and 34 C.F.R. 300.516.

Notice of Appeal: If you appeal, you must file a Notice of Appeal that sets forth the order appealed from and the grounds of the appeal.

Filing in common pleas court: If you bring your civil action in Ohio common pleas court, within the 45 days referenced in #2.a. above, you must file:

1. The **original** Notice of Appeal with the Ohio Department of Education. (Send the original to the address provided for ODE in #1(a) above).
2. A copy of the Notice of Appeal with each of the following:
 - The appropriate court; and
 - The other party to the due process whom your appeal is brought against.

Filing in federal district court: If you are bringing your civil action in the United States district court, within the 90 days referenced in #2.b. above, you must file your Notice of Appeal in accordance with the court's requirements. Check with the district court to determine the district court's specific filing requirements.