

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

In Re: S.K. : CASE NO. 1978-17  
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O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision herein appealed from, be, and it is hereby affirmed.

This 12<sup>th</sup> day of June, 1978.

  
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THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

In re: S.K. : REPORT OF  
Case No. 1978-17 : HEARING OFFICER

PART I

SUMMARY OF APPEAL

On November 4, 1977, a Local Hearing Review Board rendered a decision after a hearing held on October 10, 1977. The decision held that the parent of S.K. (the parent shall hereinafter be referred to as "Appellant") was not entitled to reimbursement for private school tuition and for psychological evaluations. Appellant appealed the decision to the State Board of Education on November 29, 1977. The Hearing Officer recommends that the decision of the Local Hearing Review Board be affirmed.

PART II

FINDINGS OF FACT

Appellant requested a hearing on August 15, 1977 because she did "not agree with the planned placement of our

child in the program that you have recommended for her." Prior to the hearing, on September 23, 1977, a planning committee, which included Appellant, met to consider the placement of the child, S.K. Appellant agreed to the suggested placement of her child that resulted from the September 23, 1977 meeting.

The hearing requested by Appellant was held on October 10, 1977. The Local Hearing Review Board was comprised of three individuals who were not employees of the Local Education Agency, and there were no objections made to the composition of the Local Hearing Review Board. Appellant was represented by counsel and had an opportunity to cross-examine the witnesses who testified for the Local Education Agency. The hearing was not directed to the results of the September 23, 1977 planning committee meeting and the recommended placement that resulted from that meeting. Instead, the thrust of the hearing was whether Appellant should be reimbursed for the tuition costs for private educational agency placement and for the costs of psychological testing Appellant had incurred without notification to the local educational agency.

The decision of the Local Hearing Review Board was made in writing on November 4, 1977 and the parties were notified. The decision contained findings of fact, conclu-

sions, and recommendations. Appellant filed an appeal to the State Board of Education on November 29, 1977. The appeal did not set forth any specific grounds for appeal other than to state that the decision and findings of the Local Hearing Review Board were erroneous. The transcript of the hearing was received by the State Board of Education on May 18, 1978.

The record discloses that the child was attending a private educational agency during the 1976-1977 school year. The private educational agency provided the student a multi-handicapped program. On April 23, 1977, a conference was held with Appellant and representatives from the Local Educational Agency and the private educational agency in attendance. Appellant contended during the October 10 hearing that this conference resulted in a recommended placement of her child that she could accept or reject. The Local Educational Agency contended that the April 23, 1977 conference was for the purpose of determining the attained status of the child and was the beginning of the process of determining the proper placement of the child. It was indicated at the April 23, 1977 meeting that a multi-handicapped program provided by the Local Educational Agency was a possible placement for the child. The Local Hearing Review Board found that if Appellant had acted on the recommendations

made at the April 23, 1977 meeting, there would have been adequate time for the development of the appropriate Individual Educational Plan for fall placement by the Local Educational Agency.

On August 15, 1977, Appellant re-enrolled the child in the private educational agency. The Local Hearing Review Board found that the decision to enroll the child in the private educational agency for the 1977-1978 school year was made by Appellant. The Local Hearing Review Board also found that the private educational agency had not been approved by the State Department of Education.

Briefs and arguments from the parties were not requested by the Hearing Officer. The federal regulations provide that the state educational agency shall "afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official." The record submitted in the instant case was extensive and all points were, in the opinion of the Hearing Officer, adequately covered in the record and the post-hearing briefs submitted by counsel to the Local Hearing Review Board.

### PART III

#### CONCLUSIONS OF LAW

Under the Georgia Special Education Annual Program Plan, the parent of a child is entitled to a hearing before

a local hearing review panel composed of three disinterested persons who are not employees of the local educational agency. Special Education Regulations and Procedures, Sec. IIB3a (August, 1976). The parent is entitled to be represented by counsel and must be given the right to examine and cross-examine witnesses. In the hearing held on October 10, 1977, these due process requirements were met by the Local Educational Agency.

On August 15, 1977, when Appellant requested the hearing before a local hearing review board, the Local Educational Agency had not completed the placement of the child. The hearing before a local hearing review board, therefore, should not have been convened on Appellant's disagreement with any placement.

The Georgia Special Education Annual Program Plan in effect in August, 1977, did not provide that a parent could be reimbursed for evaluations privately obtained. The federal regulations upon which the parent apparently relies also provide that the parent cannot be reimbursed for privately obtained evaluations unless the parent disagrees with the evaluation made or used by the local educational agency. In the event there is a disagreement, then the parent can request a hearing for the purpose of determining if the evaluation used by the local educational agency is adequate. In the instant case, Appellant did not disagree

with any of the evaluations made or used by the Local Educational Agency. Appellant could not, therefore, be reimbursed for any private evaluations she obtained. 45 C.F.R. §121a.503(b).

The appeal to the State Board of Education was from a decision made by a Local Hearing Review Board and not from a decision made by a local board of education. The provisions of Ga. Code Ann. §32-910, therefore, are inapplicable.

It should be noted that the regulations promulgated by the federal government to institute the provisions of P.L. 94-142 did not become effective until October 1, 1977. The provisions of these regulations, therefore, did not control the actions of the Local Educational Agency. Additionally, the regulations under Section 504 of the Rehabilitation Act of 1973, as amended provide that a local educational agency must move to implement the provisions of the Act as soon as practicable, but in any event not later than September 1, 1978. 45 C.F.R. §84.33(d). The corollary of this provision is that if a local educational agency was not in compliance with the timeline provisions of the regulations prior to September 1, 1978, then the local educational agency was operating within a "safe harbor." The Local Educational Agency acted in good faith in determining the placement of the child.

PART IV  
RECOMMENDATION

Based upon the above findings and conclusions, the reports of the Local Hearing Review Board and the record submitted, the Hearing Officer recommends that the decision of the Local Hearing Review Board be affirmed.

*L. O. Buckland*  
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L. O. BUCKLAND  
Hearing Officer