

STATE BOARD OF EDUCATION

STATE OF GEORGIA

In re: R. L. H. : CASE NO. 1978-29
Appellant. :

O R D E R

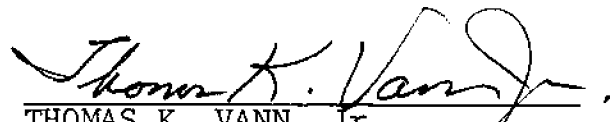
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after vote in open meeting,

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.

Mrs. Oberdorfer was not present.

This 12th day of October, 1978.


THOMAS K. VANN, Jr.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: R.L.H.

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CASE NO. 1978-~~28~~29

REPORT OF
HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a special education placement brought by the parents of a sixteen year old student (hereinafter "Student"). The appeal objects to placement of the Student in the Local School System program. The parents want the Local School System to pay the cost of the Student's attendance at a school which specializes in learning disabilities. The Hearing Officer recommends that the decision of the Local Hearing Review Officer be sustained.

PART II

FINDINGS OF FACT

The hearing before a local hearing review officer was held on June 1, 1978 at the request of the parents of the Student. A review of the record submitted indicates that the Local School System complied with the procedural

requirements of Public Law 94-142 in notifying the parents and in conducting the hearing. The parents have not registered any complaints concerning the procedures used by the Local School System.

The Student is sixteen years old and suffers from a learning disability which is manifested by a short memory when he is presented with visual materials. Performance and verbal test scores place the Student in the superior to normal range of intelligence, but he has been able to advance only to a fifth grade reading level. For the past three years, the Student has been in a special school which specializes in learning disabilities.

The parents desire the Student to remain in the special school and have the Local School System pay the Student's tuition. There was conflicting testimony concerning the effect that a transfer back to the public school system would have upon the Student. The Local School System will provide three periods of special education by trained personnel in a resource classroom whereas the special school provides four hours of special education. In addition to the three hours of special education, the Local School System will permit the Student to be in the regular classrooms for three periods during the day. The individualized education program for the student provides that the special education

teacher will work with the regular classroom teachers, that tests will be given orally by both the regular classroom teachers and the special education teacher.

The Local School System has a special education program that has been in effect for some time and it has students within the program who have been making satisfactory progress. Test scores made by the students presently being served are comparable in many respects with the test scores of the Student.

It is the opinion of the Hearing Officer that the evidence shows that the Local School System has the personnel and the facilities to carry out the individualized education program that has been devised for the Student.

The Local Hearing Review Officer decided that placement in the Local School System was appropriate. The Review Officer's decision was made on June 20, 1978 and the parents appealed the decision to the State Board of Education through the local superintendent on June 29, 1978.

PART III

CONCLUSIONS OF LAW

The parents have set forth six grounds for their appeal to the State Board of Education. These grounds are:

(1) The system of appeals, which provides for the State Board of Education to sit in final review of the decision of the local school systems and the selection of local hearing officers allegedly from other than a representative sampling of the community, violates the Student's rights to due process and the provisions of the federal and State constitutions and is inconsistent with Public Law 94-142.

(2) The Local System cannot comply with Public Law 94-142 by prescribing a "paper program" without any demonstrated ability to perform the program.

(3) The Local Hearing Review Officer erred by ignoring and failing to address the issue of the necessity for a self-contained classroom setting for a learning disabled child.

(4) The Local School System's emphasis on 'coping' and 'the social skills' does not fairly comply with the requirements of Public Law 94-142 to the extent of offering a program with probable risks of failure in the academic areas.

(5) The Local Hearing Review Officer did not have a substantial basis for his conclusion that the Student had positive feelings about the public school.

(6) The Local Hearing Review Officer could not possibly give a fair consideration to the evidence without the benefit of a typed manuscript when the testimony took approximately twelve hours of time and 478 pages of transcript.

It is the opinion of the Hearing Officer that none of the grounds asserted by the parents provides a sufficient basis for reversing or changing the decision of the Local Hearing Review Officer.

The Local Hearing Review Officer did not address the objection made by the parents that the system established by the State Board of Education was unconstitutional and deprived the Student of due process and violated the provisions and intent of Public Law 94-142. The State Board of Education also should not make a decision that the process it established for determining the placement of a handicapped child is unconstitutional. If the process is unconstitutional then the question should be decided by the courts. Nevertheless, the procedures established were approved by the proper authorities of the federal government under whose regulations the process has been established. Also, the parents have only made a general objection to the process without showing that there is a violation of the due process rights of the Student and without showing specifically how the process violates the rules and regulations of the federal government. The Hearing Officer, therefore, concludes that the State Board of Education should not issue a decision that its own rules and regulations governing special education placement are unconstitutional.

The parents contend that the Local School System cannot comply with Public Law 94-142 when it does not demonstrate that it has the ability to perform the program which it has designed under the individualized education program for the Student. Also, the parents object to the Local School System's emphasis on "coping" and "social adjustment". The evidence contained in the record, however, demonstrates that the Local School System is prepared to carry out the program contained within the individualized education program designed for the Student and that it did not place undue stress on coping and social adjustment. The Local School System has a staff of qualified specialists in learning disabilities who will be emphasizing the academic subjects to the Student. The coping and social adjustment are merely adjuncts of the Student being in the public school system which the Local School System thought was important. The importance of a student being in the public school system underlies the entire concept of Public Law 94-142, notwithstanding the fact that self-contained situations are approved where they are found to be necessary. The individualized education program submitted into evidence stresses the academics to be given to the Student, shows how the program will be carried out, and does not show an undue stress on coping or social adjustment. The Hearing Officer concludes that the

Local School System can perform the program that has been established in the Student's individualized education program and that there was not any undue stress on coping and social adjustment.

The last three objections made by the parents go to the content of the Local Hearing Review Officer's decision. The parents complain that (1) the Local Hearing Review Officer did not address the necessity of a self-contained classroom; (2) he did not have a substantial basis for concluding that the Student had positive feelings about the public school, and (3) he could not have given fair consideration to the evidence without the benefit of a written transcript. The parents have not pointed out any requirement that exists for a trial court or a hearing officer to make a decision with the benefit of a written transcript and the Hearing Officer is not aware of any such requirement. The regulations of the federal government do not contemplate the preparation of a written transcript in order for the hearing officer or review board to make its decision since it is required that the decision be rendered within twenty days after the hearing. The Hearing Officer, therefore, concludes that a written transcript is not a necessity in order for the local hearing review officer or board to make its decision.

The parents have not pointed to any evidence that the Local Hearing Review Officer failed to consider the self-contained setting in arriving at his decision. A review of the decision indicates that the Local Hearing Review Officer was aware of the self-contained setting. A substantial portion of the testimony at the hearing concerned the appropriateness of the self-contained setting and the decision of the Local Hearing Review Officer discusses the concepts of least restrictive environment and the development of an appropriate individualized education program. The Hearing Officer concludes that the Local Hearing Review Officer did not commit error by omitting the words "self-contained classroom" from his decision.

The Hearing Officer also concludes that if the Local Hearing Review Officer erred in stating that the Student had positive feelings about the public school, the error was harmless in that the feelings the student has about the public school does not establish whether the individualized education program of the Local School System is appropriate and whether the Local School System can provide a free and appropriate public education to a Student. The Hearing Officer therefore concludes that the decision of the Local Hearing Review Officer properly considered the necessary factors.

After a review of the transcript submitted in this proceeding, the Hearing Officer concludes that the placement of the Student in the Local School System under the individualized education program developed by the Local School System will provide the Student with a free and appropriate public education.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the individualized education program prepared by the Local School System is appropriate, that the Local School System can provide a free and appropriate public education to the Student, and that the Local School System does not have to pay tuition for the student to attend a school specializing in learning disabilities. The Hearing Officer, therefore, recommends that the decision of the Local Hearing Review Officer be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer