

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J.E.B.G., :
Appellant : CASE NO. 1979-5

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 of the Hearing Officer are accepted, but the Conclusions of Law and the recommendation made by the Hearing Officer are not accepted on the ground that the Local Board is only required to be responsible for the educational costs of a 180 day program, and

DETERMINES AND ORDERS, that the decision of the Local Board herein appealed is hereby sustained.

Mrs. Oberdorfer and Mrs. Huseman dissented.

This 10th day of May, 1979.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

MAY 8 1979

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CASE NO. 1979-5

REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is a special education appeal arising from the non-acceptance by a Local Board of Education (hereinafter "Local Board") of a regional hearing officer's recommendation concerning the placement of an eleven year old student (hereinafter "Student") in a residential program for eleven months. The Local Board excepted to providing an eleven month program and to paying for non-educational expenses, e.g., medical expenses. The Hearing Officer recommends that the decision of the regional hearing officer be upheld.

PART II

FINDINGS OF FACT

On August 25, 1978, an individual education program (hereinafter referred to as "IEP") was presented at a meeting of the Student's mother, representatives of the school system, and representatives of the private school the Student attended.

The IEP provided for residential placement in the private school for 180 days. The Student's mother did not object to placement in the private shcool, but she did object to placement for only 180 days. The Student's mother requested a hearing pursuant to the provisions of Public Law 94-142 and the related regualtions. The hearing was held on November 1, 1978, and the hearing officer issued a report on November 20, 1978. The hearing officer decided that the local school system should provide the Student with an 11-month tuition award. The Local Board excepted to the hearing officer's decision and a notice of appeal was given by the Local Board to the State Board of Education on December 20, 1978. Following the appeal by the Local Board, there was a period during which the State regulations were changed as a result of an opinion by the Georgia Attorney General (1979 Ops. Atty. Gen., January 5, 1979). The appeal was finally submitted to the State Board of Education for appeal on March 14, 1979.

The regional hearing officer found that a private school residential treatment program was appropriate for the Student. Additionally, the hearing officer found that the school system did not disagree with the private residential program, but the local school system was willing to pay for only 180 days of placement. The private school, however, operated on an eleven month basis. There was testimony that an eleven month program would be beneficial for the Student, but there was no evidence which established that the 180-day placement recommended by the

local school system was clearly erroneous.

The hearing officer held that the failure of the local school system to present any evidence regarding the appropriateness of a 180-day program required a finding that the eleven month program was appropriate. The hearing officer, therefore, held that the local school system should provide the Student with an eleven-month tuition award.

A review of the record submitted with the appeal shows that the local school system submitted sufficient evidence to support its placement for 180 days. There was but slight evidence to indicate that the Student required more than 180 days placement. The Hearing Officer, therefore, finds that the Student required only 180 days residential placement.

PART III

CONCLUSIONS OF LAW

The Local Board contends that any requirement to pay for more than 180 days and to pay for other expenses, such as room, board, and medical care, is in violation of Article VII, Section II, Paragraph I of the Constitution of the State of Georgia of 1976, the Adequate Program for Education in Georgia Act, and the Fifth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States. The Student's mother contends that Public Law 94-142 requires the payments and the Constitution of the the State of Georgia permits the payments. The Local Board relies on the cases of Crim v. McWhorter, 242

Ga. 863 (1978) and In re R. C., State Board of Education Case No. 1978-25, the provisions of Ga. Code Ann. §32-658a (establishing a minimum of 180 days schooling), the provisions of Article VII, Section II, Paragraph I of the Georgia Constitution (Ga. Code Ann. §2-4701), and an opinion of the Georgia Attorney General, 1979 Ops. Atty. Gen (January 5, 1979). The Student's mother however, points to the federal regulations, 45 C.F.R. §121a.302, and Article X, Section II, Paragraph IX of the Constitution of the State of Georgia of 1976 (Ga. Code Ann. §2-6709).

Article VII, Section II, Paragraph I of the Constitution of the State of Georgia of 1976 (Ga. Code Ann. §2-4701) provides, in part:

"The powers of taxation over the whole State shall be exercised by the General Assembly for the following purposes only:
...2. For educational purposes...."

The federal regulations provide, in part:

"If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child." 45 C.F.R. §121a.302.

Article X, Section II, Paragraph IX of the Constitution of the State of Georgia of 1976 provides:

"The General Assembly is hereby authorized to appropriate funds to any State department or other State agency for the purpose of being used to obtain

funds from the Federal Government for educational loans and other educational purposes and all such State departments and other State agencies shall be authorized to use the funds so appropriated and the funds received from the Federal Government for the purposes authorized and directed by the Federal Government in making such funds available."

Despite the contentions of the parties, the IEP prepared for the Student called for residential placement for only 180 days. The Student was enrolled in the private school when the IEP was prepared and the school system agreed that placement in the private school was appropriate. The private school, however, runs its program on an eleven month term rather than for 180 days. Additionally, the private school program operates for seven days a week and on what are normally holidays in the public school system so that 180 days of schooling in the private school extends over approximately six months rather than nine months as in the public school system. The issue that exists, therefore, is whether the school system is responsible for the costs of the placement when 180 days is adequate, but the school system places the student into a program that runs for eleven months. Additionally, an issue exists concerning the extent of the costs for which the school system must assume responsibility.

A definite conflict exists in the question of what expenses the local school system is required to pay. The federal regulations require the school system to pay for non-medical care and room and board. 45 C.F.R §121a.302. The

Constitution of the State of Georgia, however, permits the expenditure of funds only for "educational purposes." The Attorney General of Georgia has opined that school funds cannot be spent for room and board and medical expenses. 1979 Ops. Atty. Gen. (January 5, 1979). The opinion was rendered notwithstanding the provisions of Article X, Section II, Paragraph IX of the Constitution (Ga. Code Ann. §2-6709), and was based on the decision of the Supreme Court of Georgia in Wright v. Absalom, 224 Ga. 6 (1968). In Wright v. Absalom, the Court held that school lunches were not "educational expenses" and it was unconstitutional for the legislature to appropriate money to pay for the lunches. Article X, Section II, Paragraph IX is similarly limited in that the funds obtained and appropriated must be for "educational purposes". The Hearing Officer, therefore, is of the opinion that the local school system constitutionally cannot make payments for board and room, medical expenses, or other costs that are not deemed to be "educational expenses".

With regard to the question of whether the local school system must pay for more than 180 days of placement, the case of In re R.C., Case No. 1978-25, is of but slight help in determining the answer. In re R.C. involved a request by the parent for a twelve month program. The school system, however, recommended placement in a 180-day program which was available within the school system. The basic issue was whether the evidence supported the placement made by the local school system.

In the instant case, however, the parties agree on the placement and the only difference is over who should pay the costs when the local school system places the student into a program which exceeds 180 days even though it has determined that 180 days is appropriate.

In the case of Crim v. McWhorter, 242 Ga. 863 (1978), the Court stated that the guarantee of a free public education contained in the Georgia Constitution was limited to 180 days of tuition free education. The Court held that it was constitutionally permissible for a local school system to impose a tuition fee if the tuition fee was not a condition precedent to matriculation. The Court also pointed out that the prior case of Claxton v. Stanford, 160 Ga. 752 (1925), held that it was unconstitutional to impose a tuition fee if the fee was a condition precedent to matriculation.

In the instant case, the school system decided that a 180-day program was adequate, but it nevertheless placed the student into an eleven-month program. There is nothing in the record to indicate the reason why the placement was made into a program that covered an eleven-month period. In any event, the local school system established, directly or indirectly, the length of the program to which it assigned the Student. The Student's mother did not have any control over the length of the program. If the local school system pays for only 180 days of tuition, the parent will be required to pay for the remainder of the tuition until the completion of the program for

the particular year. Payment of the tuition fee thus becomes a condition precedent to matriculation and the Georgia Supreme Court has stated that such a requirement is unconstitutional. The Hearing Officer is of the opinion that once the local school system establishes the length of a particular educational placement, it is responsible for providing a free public education during the entire length of the program to which the student is assigned.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that the local school system is required to pay the educational costs arising from placement of the Student in an adequate program, and that since the program into which the Student was placed is eleven months in duration, the local school system is required to pay the educational costs arising therefrom. The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be upheld.



L. O. BUCKLAND
Hearing Officer