

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: HARRY L.

APPELLANT

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CASE NO. 1979-10

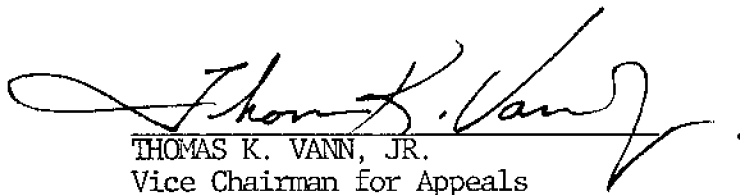
O R D E R

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 of the DeKalb County Board of Education herein appealed from is hereby affirmed.

This 12th day of July, 1979.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Harry L. (hereinafter "the Student") from a decision by the DeKalb County Board of Education (hereinafter "Local Board") to adopt the recommendation of a regional hearing officer regarding the placement of the Student under Public Law 94-142. The parents contend that (1) the issue of appropriate placement prior to the hearing and compensation through the hearing was not addressed; (2) the hearing and decision-making procedure does not afford due process, and (3) the decision is contrary to the weight of evidence and much relevant, probative evidence was ignored in rendering the decision. The Hearing Officer recommends that the decision of the Local Board be affirmed.

PART II
FINDINGS OF FACT

The hearing before the regional hearing officer was held on May 23, 1979 with both the Student and the Local School System represented by counsel. The regional hearing officer issued his opinion on May 23, 1979 and the Local Board adopted the decision on June 6, 1979. The Student's parents thereafter appealed the decision on June 15, 1979.

The record shows that the Student is presently sixteen years old and, at the time of the hearing, had been attending a residential treatment center. The parents had the Student initially evaluated when he was in the second grade and he was diagnosed as being psychoneurotic. Family counselling was the recommended treatment.

The Student was evaluated by the Local School System in 1976 when he was thirteen, and it was recommended that he obtain psychotherapy. The following year, the parents had the Student tested at the Emory University Department of Psychiatry. The doctors recommended that the Student be placed in a residential treatment program. The parents followed the recommendation and placed the student in the Anneewakee Treatment Center in 1977.

The parents contacted the Local School System in January, 1979. Following the contact, the Local School System began preparing an Individual Education Program for the Student. The Local School System recommended that the Student be placed in a self-contained class with eight students who

were supervised by two people trained in dealing with the problems evidenced by the Student. The parents objected to placing the Student back into the public schools and requested a hearing prior to the development of an Individual Education Program by the Local School System.

The regional hearing officer found that the Student was not severely emotionally disturbed, and that he did not exhibit unusually bizarre and destructive behavior. He also found that children with similar problems are successfully attending the program which the Local School System proposed for the Student. Additionally, the professional resources were available in the school system to meet the needs of the child along with psychotherapy to provide psychiatric services. The regional hearing officer concluded that the Local School System could meet the needs of the Student with the resources available in a less restricted environment than provided by the residential placement.

PART III

CONCLUSIONS OF LAW

The parents have appealed on the grounds that (1) the regional hearing officer did not consider certain evidence; (2) the hearing and decision-making procedure does not afford due process, and (3) the issue of payment for residential treatment prior to the hearing was not addressed by the regional hearing officer. The issues of whether due process was afforded and whether the Local School System should pay

for the residential treatment prior to the hearing was not raised at the hearing. The Local Board did not have an opportunity to make any decision regarding these issues. Since they were not raised during the hearing before the regional hearing officer, they cannot now be raised for the first time during the review process. See, Hobby v. Tift County Bd. of Ed., Case No. 1977-6. The Hearing Officer, therefore, concludes that the regional hearing officer did not err by omitting these issues from his decision since they were not presented at the hearing. Additionally, the Local Board did not err in adopting the regional hearing officer's report without addressing these issues.

The State Board of Education has adopted the standard that if there is "any evidence" to support the decision rendered, then it will not disturb that decision on review. Antone v. Greene County Bd. of Educ., Case No. 1976-11. The Appellate Courts of Georgia have also upheld this as the standard of review which the State Board of Education must apply. Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978).


There was evidence in the record that the Local School System has the capability of providing an appropriate education for the Student. The testimony indicates that the Local School System can provide the same educational experience that the Student is presently obtaining in the residential setting. It also does not appear that the Local School System overlooked any of the previous evaluations of the Student and

is prepared to provide the necessary support services. The Hearing Officer, therefore, concludes that there is evidence in the record which supports the regional hearing officer's decision that the Local Board can provide an adequate education for the Student.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that the DeKalb County School System can provide the Student with an appropriate education and that the decision of the regional hearing officer is supported by the evidence submitted at the hearing. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education, which adopted the decision of the regional hearing officer, be affirmed.



L. O. BUCKLAND
Hearing Officer

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that the Student was not handicapped as contemplated by the provisions of Public Law 94-142 and that the decision of the regional hearing officer is supported by the evidence submitted at the hearing. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education, which adopted the decision of the regional hearing officer and denies reimbursement for private educational expenses, be affirmed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer