STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: T. R., : CASE NO. 1979-14
:
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 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.

Mr. Vann was not present.

This 13th day of September, 1979.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SEP 10 1979

In Re: Troy R.	:	CASE NO. 1979-14
	:	
	:	REPORT OF
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision by the DeKalb County Board of Education (hereinafter "Local Board") to accept the recommendation of a regional hearing officer that an appropriate placement is available for Troy R. (hereinafter "the Student") within the DeKalb County School System (hereinafter "Local System"). The appeal was made by the Student's parents and is based on the assertion that the regional hearing officer erred in not finding that residential placement was necessry in order to provide a "free, appropriate public education." The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

A hearing was held before a regional hearing officer on June 4, 22, and 29, 1979, for the purpose of

determining if the Student's placement as proposed by the Local System was appropriate. The regional hearing officer issued his report on July 6, 1979 and the Local Board decided on July 9, 1979 that a free and appropriate educational program could be provided within the Local System. The Student's parents, through counsel, filed an appeal with the State Board of Education on July 31, 1979.

The regional hearing officer found that all procedural steps required by law and regulation had been complied with by the parties. In a series of questions and answers, the regional hearing officer also found that:

1. The Student's parents were concerned by a perceived sudden and marked decline in the Student's academic achievement and behavior during his ninth grade year, but the Local System did not note such a decline and the grades posted during the ninth grade were better than those obtained during the eighth grade.

2. The Student's academic records and observed behavior within the school did not establish any obvious special education needs or behavioral problems.

3. Although referral procedures and programs existed, the parents voluntarily obtained outside testing and placed the Student in a private residential program in the fall of 1978 without asking for any evaluation by the Local System after they had made an initial inquiry of the Student's counselor and did not receive a satisfactory response.

4. The Student was not handicapped during the spring of 1978 and an appropriate program existed for him in the fall of 1978.

5. The Student does not have any crystalized personality traits, but because he has

been confined to a residential program for one school year, he is functioning as handicapped and has to be so considered.

6. The School System does have an appropriate placement available, but, because the School System does not have an independent evaluation of the Student, an evaluation should be made before the placement is finalized.

The regional hearing officer summarized his findings and recommendations by concluding that the Student could be served in the interrelated learning disabilities - behavioral disorders program available within the Local System. He also recommended further evaluations by the Local System to determine the extent of the Student's handicap.

PART III

CONCLUSIONS OF LAW

The issue raised by this appeal is whether placement of the Student in the interrelated high school program is appropriate. The Student's parents contend that the Student is handicapped to the extent he needs residential care and that placing him in the interrelated program is both inadequate and does not put him in the "least restrictive" environment.

There was never any contention by the Local System that the Student did not presently require assistance. The personnel from the Local System believed it was necessary for the Student to be placed in a highly

structured program in order to permit a gradual phasing into the regular classrooms after being confined to a residential program for one school year. The System personnel were concerned that the Student would require the structure in order to reduce or eliminate the shock of being removed from the structured atmosphere of the residential program. The Local System also felt that the Student could be placed into a regular classroom situation rather quickly since a serious question even exists whether the Student is "handicapped" as defined by the federal regulations.[1]

The burden of proof in determining placement is upon the local system. Georgia Amended Annual Program Plan, Special Education Regulations and Procedures, Sec. II B,3,a(3)(h).[2] In the instant case, the Local System established that the interrelated high school program was available, that it was designed to serve the needs of students who had either or both learning disabilities and behavioral disorders. The scope and nature of the program were related to the needs of the Student.

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[1]The Student's symptoms were not evident over a prolonged period of time and, to the extent they became evident to the parents, appeared to be related to week-end drug abuse. The federal regulations define "seriously emotionally disturbed" as "a condition exhibiting. . .characteristics over a long period of time. . . ." (emphasis added). The recommendation for special education appears to be primarily for the purpose of providing a transition from a structured residential program to the regular classroom.

[2]The regulation was changed effective July 1, 1979 to remove the burden from the Local System.

The Student's parents did not present any evidence which established that the program was not appropriate. The principal argument advanced by the parents is that the student does not have a learning disability, and to place him in a program which addresses itself to both learning disabilities and behavioral disorders will cause a stigma to be attached. The parent's argument is not convincing. First, there was no evidence presented that a student who has a learning disability suffers from any stigma. Secondly, there does not appear to be any prohibition against treating one handicap, in this case behavioral disorder, in a program designed to treat multiple handicaps.

Another argument advanced by the parents is that the interrelated high school program presented by the Local System would not be the "least restrictive environment". There was no evidence presented that the Student could not learn in the public school setting. At the time of his withdrawal by the parents, he made 2 B's, 2 C's and 2 D's in the public high school. None of the grades were failing, thus indicating that he could and did learn in the public school environment. The federal regulations require the local school system to insure:

> "(1) That to the maximum extent appropriate, handicapped children. . .are educated with children who are not handicapped, and
> (2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs

> only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily." 45 C.F.R. 121a.550.

The interrelated high school program proposed by the Local System does provide for educating the Student "with children who are not handicapped" to the maximum extent appropriate with his progress and ability. The Hearing Officer concludes that the interrelated high school program offered by the Local System complies with the federal regulations and does not fail to meet the needs of the Student.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the educational program proposed by the Local System is appropriate. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education be affirmed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer