

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J. C., : CASE NO. 1979-16  
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 recommendation of the Hearing Officer is not accepted on the grounds that the regional hearing officer found evidence to support the proposed placement and the Board finds that the student can receive an education in the local system, and

DETERMINES AND ORDERS, that the decision of the Dublin City Board of Education herein appealed from is hereby sustained.

Mrs. Huseman dissented.

Mr. Vann was not present.

This 13th day of September, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

(Encl. 10) 1979

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

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| In Re: Joseph C. | : | CASE NO. 1979-16 |
|                  | : |                  |
|                  | : | REPORT OF        |
|                  | : | HEARING OFFICER  |

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Joseph C. (hereinafter "the Student") from a decision by the Dublin City Board of Education (hereinafter "Local Board") to accept the recommendation of a regional hearing officer that the individualized education program proposed by the Dublin City Schools (hereinafter "Local System") was adequate for the needs of the Student. The parents have appealed to the State Board of Education on the grounds (1) the evidence submitted does not support the regional hearing officer's decision, (2) the regional hearing officer erred in not taking into consideration the evidence provided by the experts on behalf of the parents. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II  
FINDINGS OF FACT

A hearing before a regional hearing officer was held on June 27, 1979, for the purpose of determining if the Local System's recommended individual education program for the Student would provide an appropriate education.<sup>1</sup> The program proposed provided for the Student's attendance at school in the regular classrooms with special guidance sessions and a long-range program of courses to encourage participation with peers. The regional hearing officer issued his report on July 4, 1979 and found that the proposed program would provide an adequate educational placement. The Local Board adopted the regional hearing officer's recommendation in a decision made on July 9, 1979. The Student's parents appealed to the State Board of Education on August 2, 1979.

The Student is eighteen (18) years old and entering his final year of school.<sup>2</sup> He was identified as having minimal brain dysfunction at an early age and has

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<sup>1</sup>The hearing and the appeal were limited to placement for the 1979-1980 school year and no questions were raised or decided about the placement for the 1978-1979 school year. As hereinafter noted, the parents placed the Student in a residential program prior to the hearing.

<sup>2</sup>At the time of the hearing, the Student was seventeen years old.

received private psychiatric and psychological assistance on a regular basis. Various tests have indicated he has an I.Q. between 118 and 133. He has, nevertheless, obtained only marginal grades throughout and had to repeat the seventh and ninth grades. He developed severe emotional problems and had a lack of self-esteem and inability to develop any peer relationships. During the first quarter of the eleventh grade, he received grades of 91, 89, 81 and 70, but then withdrew from school at the beginning of the second quarter. The Student's parents then requested the Local System to develop an individualized education program (I.E.P.) for the Student. During the development of the I.E.P., the parents enrolled the Student in a private residential facility. When the Local System proposed the I.E.P. for the Student, the parents requested a hearing.

The regional hearing officer found that the Local System had provided all of the required procedural safeguards. He decided that the Local System had submitted persuasive evidence that "the facilities and educational provisions of the high school will meet the educational needs of . . . [the Student] . . . ."

### PART III

#### CONCLUSIONS OF LAW

The parent's appeal to the State Board of Education asserts that the Local System failed to establish that its proposed program was adequate and that the regional hearing officer erred when he found the Local System had presented persuasive evidence and overlooked the evidence of the psychologists and psychiatrists submitted on behalf of the parents. The parents argue that the evidence in support of the proposed program was primarily the testimony of the psychometrist for the Local System which did not establish the appropriateness of the program.

The burden of establishing the appropriateness of a proposed placement is on the Local System. Georgia Amended Annual Program Plan, Sec. IIB,3,a(3)(h).<sup>3</sup> The regional hearing officer found that the Local System had presented persuasive evidence that the program would meet the educational needs of the Student. The State Board of Education follows the rule that if there is any evidence in the record to support the decision of the trier of fact, then the decision will not be disturbed by the State Board of Education. Antone v. Greene County Bd. of Educ., Case No. 1976-11. A review of the record,

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<sup>3</sup>The regulation was changed effective July 1, 1979 to remove the burden from the Local System.

however, does not disclose any evidence to support the decision of the regional hearing officer.

The only evidence concerning the proposed program was the testimony of the school psychometrist and the special education coordinator. The school psychometrist did not discuss the contents of the proposed program at any point in his testimony, either on direct examination or cross examination. He testified that he performed the psychological evaluation and an outline of the psychological approach to be taken. He also testified that he did not have any knowledge of the previous counseling the Student had received when he conducted the evaluation and he was not aware of the approaches taken by the psychologists the Student had visited previously. The psychometrist did not give any testimony concerning the proposed program except his opinion that the proposed program would effect changes in the Student.

The special education consultant testified that she had interviewed the Student and reviewed his records. She also testified that she saw the Student's absenteeism to be part of his problem. Her only discussion of the proposed program was to point out that the I.E.P. was not completed because it was only in the proposal stages.

The Student's needs were not identified in any of the testimony. There was not any discussion about the contents of the proposed program and how the program

would meet the Student's needs. None of the witnesses discussed how the proposed program differed from the previous behavior modification approaches that had been attempted. The documentary evidence identifies the Student as having a "personality disorder," "moderately severe chronic neurosis," "emerging schizoid personality disorder," and "minimal brain damage with perceptual dysfunction." These problems and how the proposed plan would impact any of these problems were not discussed. The proposed plan itself does not address itself directly to any of the Student's problems or needs. Instead, the proposed program appears to be based on returning the Student to the regular classroom situation and make all of the teachers aware of his need for specialized attention. It is the opinion of the Hearing Officer that the total "evidence" concerning the proposed program in this case falls short of establishing that the program is appropriate.

The parents presented evidence which showed that the Student and the family had been engaging in the type psychological behavior modification program suggested by the proposed plan without any success. The parents presented testimony and documents which showed that the Student had developed a personality disorder, he did not have any friends, he withdrew from reality, he had a low self-concept, and he was exhibiting physical violence.

The documents and testimony established that a structured environment was necessary in order to effect changes in the Student.<sup>4</sup> The Local System did not rebut the evidence presented by the parents. The Hearing Officer, therefore, concludes that the Local System did not establish that the proposed educational program for the Student was adequate.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted and the testimony received, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local System did not present an appropriate individualized education program for the Student. The Hearing Officer, therefore, recommends that the decision of the Dublin City Board of Education be reversed.

  
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L. O. BUCKLAND  
Hearing Officer

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<sup>4</sup>The psychological evaluation by the school psychometrist states that the Student "needs structure," but the structure relies on the parents.