STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J. Y., : CASE NO. 1979-18
:
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

IN RE: JIMMY Y.	:	
	:	
	:	CASE NO. 1979-18
	:	
	:	REPORT OF HEARING
	:	
	:	OFFICER

PART I

SUMMARY OF APPEAL

This is an automatic appeal from a decision of the DeKalb County Board of Education (hereinafter "Local Board") to reject the decision of the regional hearing officer that the DeKalb County School System (hereinafter "Local System") could not provide an appropriate education in the recommended placement of Jimmy Y. (hereinafter "the Student") in an interrelated learning disabilities and behavioral disorders high school program, and that a private residential program was appropriate. The Local Board disagreed with the regional hearing officer and maintains on appeal that the interrelated high school program is appropriate. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

An initial placement conference for the Student was held on May 4, 1978. The conference resulted in a recommendation by the school personnel that the Student be placed in an elementary school behavioral disorders class because it was felt he would be unable to function in a high school setting due to his immaturity and low self-concept. The Student's parents were dissatiisfied with the tentative placement and requested further consideration. Attempts were made by the Local System and the parents to resolve their differences. As a result of various mediation meetings, a conference was scheduled for August 23, 1978 for the purpose of developing an individualized education plan for the Student. At the August 23, 1978 conference, the parents were presented with another placement by the Local System, this time in an "interrelated" learning disability-behavioral disorder class located in a high school. The parents rejected this proposed placement and requested a due process hearing under the provisions of Public Law 94-142 for the purpose of determining the appropriate placement of the Student. The hearing on the Student's placement spanned three separate days, October 9, 24, and 25, 1978. The regional hearing officer issued her decision on November 20, 1978. The regional

hearing officer found that the interrelated high school program was not appropriate for the Student. She found that the Student needed a program which would be more intensively structured than the one offered in the high school program. She also found that the private residential program which the Student had been enrolled in by the parents was providing an appropriately structured and planned program that would meet the needs of the Student. It was the opinion of the regional hearing officer that the Local System was not prepared to offer the Student the proper program at the time that the individualized education program conference was held. The Local Board subsequently rejected the recommendation of the regional hearing officer in a decision that was made on May 15, 1979.

PART III

CONCLUSIONS OF LAW

The Local Board's appeal to the State Board of Education is based on the Local Board's contention that the regional hearing officer erred in determining that the interrelated high school program offered by the Local System was inappropriate. The Local Board urges that the regional hearing officer misinterpreted Public Law 94-142 as requiring the Local System to provided the "best" educational placement for the Student when all that is required is an "appropriate"

program. An "appropriate" program does not equate to the "best" program.

The record shows that the Student had been in learning disability and behavioral disorder classes within the Local System from the time he was in the second grade. He had repeated the fourth grade and was entering the seventh grade at the time of the hearing at a chronological age of 13. The student was suffering from minimal brain dysfunction which manifested itself in hyperactivity at an early age. As a result, he was unable to concentrate, to remain on task, and to develop satisfactory peer relationships. He reached the peak of his public school achievement at the end of the second grade when he tested as having reached grade level ahcievement. At the beginning of the following year, he was placed in a learning disabilities class. He was later transferred to a behavioral disorders class. During the period of his special education, he was able to make some advancement, but his level of achievement failed to advance at grade-level ability so that when tested just prior to the hearing, one of the tests indicated he was reading on a 4.8 grade level, was performing math on a 2.9 grade level, and his spelling was on a 4.0 grade level. Private psychiatrists engaged by the parents to evaluate the Student generally recommended he be placed in a residential setting in order to provide him with a very structured environment

away from the home and non-handicapped students so that he could develop both his learing attack skills and his self-esteem.

In July, 1978, the Student's parents enrolled him in a private residential program. Testimony by the teachers from the private school indicated that the Student was making significant advancements in the short period of time he had attended the residential program. He was away from non-handicapped children and his self-esteem was improving. He was also improving his learning attack skills.

The principal arguments made by the Local Board are that the regional hearing officer did not address the central issue: Was the placement program offered to the Student appropriate? The Local Board points to the various considerations discussed by the regional hearing officer in her report and concludes that the regional hearing officer was unduly concerned with the success of the past placement and the "mainstreaming" efforts, she erroneously examined the process of developing the individual education program, and she should not have considered any testimony concerning the success of the Student within the private residential program.

In general, the position taken and the arguments advanced by the Local Board would require the regional hearing officer to make her decision in a vacuum. The burden of proof for establishing the proper placement of a handicapped

student is placed on the Local System. Georgia Amended Annual Program Plan, Sec. IIB,3a(3)(h).[1] In this case, the regional hearing officer determined that the Local System failed to establish that the placement it was proposing was adequate for the Student. She also found that the private residential program the Student was attending was appropriate. The State Board of Education has followed the rule of review that if there is any evidence to support the decision of the finder of fact, then the State Board of Education will not disturb that finding on review. Antone v. Greene County Bd. of Educ., Case No. 1976-11. This standard of review has also been imposed on the State Board of Education by the Appellate Courts of Georgia. Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783, 442 S.E.2d 374 (1978). Under this standard, there has to be some clear error on the part of the regional hearing officer in reaching her decision in order to reverse on appeal. The evidence concerning the previous success of the student in the programs offered to the Student by the Local System is indicative of the ability of the Student to function within the program offered by the Local System for another year. The evidence concerning the success of the Student in the residential program is indicative of the need for a residential program. Undoubtedly, the success or lack of success of the Student in any particular program other than the proposed program could be due to

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

a variety of reasons. The regional hearing officer's discussion of the process used in determining the individualized education program does not necessarily indicate that she gave undue weight to an issue that was not before her inasmuch as the process does give some indication of the value of the program content and its ability to meet the needs of the student. The Hearing Officer is, however, of the opinion that the regional hearing officer's decision overlooks the fact that the Student was making some progress in the special education programs that had been offered by the Local System. The Student, therefore, was able to learn in the public school setting. Additionally, the interrelated program offered by the Local System was specifically geared to meet the needs of students who manifested the disabilities exhibited by the Student. There was no evidence to indicate that the Student would not continue to advance and learn at least at the levels he previously had been advancing if he did not advance at a superior rate because of the specifically designed program. As pointed out by the Local Board, the Local System is required to provide the Student with an "adequate" education, but it is not required to provide the Student with the "best" education. See, John A. v. James H. Hinson, et al., Civil Action No. 78-1717A, United States District Court, Northern District of Georgia (1978). Arguably, the Student can make greater gains in his educational achievement by

attending a residential facility, but he is making some achievement in attending the public school program. Additionally, in offering an appropriate program, the Local System is required to offer a program in the least restrictive environment. 45 C.F.R. 121a.550. The Hearing Officer, therefore, concludes that the Local System did present an appropriate educational opportunity to the Student and the regional hearing officer erred in determining that residential placement was required.

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 Local System could provide the Student with a free and appropriate public education and the regional hearing officer erred in determining that residential placement was required. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education to not accept the decision of the regional hearing officer be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer