

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JOEY P., : CASE NO. 1979-25
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 appeal herein be, and is hereby, dismissed.

This 13th day of December, 1979.



THOMAS K. VANN, JR.
Vice Chairman for Appeals

DEC 7 1979

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: JOEY P. : CASE NO. 1979-25
: :
: : REPORT OF
: : HEARING OFFICER

PART I
SUMMARY OF APPEAL

An appeal was filed with the State Board of Education on behalf of Joey P. (hereinafter "Appellant") by his parents. The appeal was from a decision by the Cobb County Board of Education (hereinafter "Local Board") to accept the findings of fact, conclusions, and recommendations of a regional hearing officer concerning the summer placement of Appellant. The appeal complains that evidence was knowingly suppressed by the Local Board and the decision was erroneous because Appellant needs more than 180 days of schooling. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II
FINDINGS OF FACT

A hearing was held on June 26, 1979 and July 12, 1979 before a regional hearing officer concerning the

summer placement of Appellant. The regional hearing officer issued his decision on July 17, 1979 and the Local Board issued its decision adopting the findings of fact, conclusions and recommendations of the regional hearing officer on July 26, 1979. The appeal to the State Board of Education was written on October 26, 1979 and filed on October 30, 1979. The appeal complained that evidence had been knowingly and wilfully suppressed by the Local Board and demanded a new hearing. It was explained that the failure to file the appeal within thirty (30) days was due to the fact a written transcript of the hearing had not been delivered to Appellant's parents until October 22, 1979. The Local Board filed a motion to dismiss the appeal on the grounds it was not timely filed.

During the course of the hearing, Appellant was represented by counsel. The hearing began on June 26, 1979 and continued to July 12, 1979 in order to obtain evaluations of Appellant. Between June 26, 1979 and July 12, 1979, Appellant was tested by two doctors. When the hearing resumed on July 12, 1979, one of the doctors was present and gave testimony. Counsel for Appellant initially objected to proceeding without the presence of the other doctor, but then agreed to proceed without calling the absent doctor. During the hearing, the regional hearing officer informed the participants that (1) a

written transcript or electronic recording of the hearing would be made available upon request, and (2) that an appeal to the State Board of Education had to be made within ten (10) days after the decision of the Local Board. Appellant's parents were also notified on August 20, 1979 that an electronic verbatim recording of the hearing was available.

PART III

CONCLUSIONS OF LAW

The initial issue raised by this appeal is whether it was timely filed. The federal regulations do not establish any period within which an appeal must be made. They do provide that the decision of the initial hearing officer is final unless the decision is appealed. 45 C.F.R. §121a.509. The Amended Annual Program Plan, however, provides that an appeal must be filed within 30 calendar days following the decision at the local level. Amended Annual Program Plan, Appendix G, [Special Education Regulations and Procedures, II, B, 3(a)(3)]. See also, Georgia Special Education, Annual Program Plan, Public Law 94-142, Final FY 80, Part VII, F, 3, a, (1), p. 46. In the instant case, the appeal was not filed within 30 calendar days after the decision of the Local Board was made. Appellant's parents seek to have the 30 day period

excused on the ground they were not furnished with a written transcript. The federal and state regulations provide that:

"Any party to a hearing has the right to:

* * *

(4) Obtain a written or electronic verbatim record of the hearing;. . ."

45 C.F.R. §121a.508; Georgia Special Education Regulations and Procedures, II, B, 3(a)(4)(iv); Georgia Special Education, Annual Program Plan, Public Law 94-142, Final FY 80, Part VII, F, 2, d, (1), (d), p. 44.

The regulations do not specify that the local school system has to provide a written record of the hearing if requested to do so by the parent. The language provides that either a written record or an electronic record must be made available to any party to a hearing. The language is discretionary and permits the local board of education to provide what is available. In the instant case, the parents were offered a copy of an electronic verbatim record of the hearing within the 30-day period for filing an appeal. The regional hearing officer also informed the parents at the hearing that an electronic recording was available to them. The parents also were represented by counsel at the hearing. The Hearing Officer concludes that the school system met the regulatory requirements and that the plea of the lack of a written transcript is insufficient to extend the period for appeal. The Hearing

Officer, therefore, further concludes that the appeal should be dismissed because it was not timely filed.

Even if the appeal was not dismissed, the decision of the Local Board would have to be upheld on the basis of the prior decision of the State Board of Education in the case of In Re J.E.B.G., Case No. 1979-5. The State Board of Education decided in Case No. 1979-5 that a local board of education is not required to provide for more than 180 days of educational placement. The issue in the instant case is whether the Local Board should provide Appellant with a summer school program, i.e., provide for more than 180 days of educational placement. The Hearing Officer concludes that even if the appeal had been timely filed, the decision of the Local Board was correct by reason of the prior decision of the State Board of Education.

The parent's final contention, that evidence was suppressed, is without any merit. Appellant was represented by counsel who was aware of the tests conducted with Appellant by a second doctor. The counsel elected to proceed with the hearing without calling the second doctor as a witness. The parents cannot, therefore, complain that any evidence was withheld by the school system. Additionally, even if the testimony of the second doctor supported more than 180 days of schooling, the decision of the Local Board to provide only 180 days of

schooling would stand. The Hearing Officer, therefore, concludes that no error was committed by the Local School System in omitting the testimony of the second doctor.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that the Local Board provided Appellant with all due process rights and acted within its discretion in deciding not to provide Appellant with a summer program of instruction. The Hearing Officer, is also of the opinion that the appeal was not timely filed. The Hearing Officer, therefore, recommends that the appeal be dismissed because it was filed too late for consideration.



L. O. BUCKLAND
Hearing Officer