STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: WESLEY B., : CASE NO. 1979-27

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 Murray County Board of Education herein appealed from is hereby reversed.

Mr. Lathem abstained.

This 13th day of December, 1979.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

1979

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: WESLEY B.	:	CASE NO. 1979-27
	:	
	:	REPORT OF
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Wesley B. (hereinafter "Student") from a decision by the Murray County Board of Education (hereinafter "Local Board") to uphold the decision of a regional hearing officer that the Murray County School System (hereinafter "Local School System") had an individualized education program ("IEP") for the Student and could provide a free, appropriate public education for the Student. The parents appealed on the grounds that the regional hearing officer erred in finding that an IEP was in effect. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On August 23, 1979, the Student's parents requested a due process hearing under the provisions of P.L. 94-142

because they were not satisfied with the placement of the Student. By agreement of the parties, the hearing was held before a regional hearing officer on October 19, 1979.[1] The regional hearing officer issued his report on October 27, 1979. The parents were notified by the local school superintendent, by letter dated November 9, 1979 that the Local Board had approved and adopted the recommendation of the regional hearing officer. A subsequent letter from the local school superintendent, dated November 13, 1979, stated that the Local Board had met on November 12, 1979 and had approved the recommendation of the regional hearing officer.[2] The parents appealed to the State Board of Education on November 13, 1979.

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[1]A question was raised during the hearing by counsel for the parents that the hearing was not timely. It appears that the delay resulted from the parent's counsel having a conflict with the originally scheduled hearing date and the need by the school system to obtain another hearing officer because conflicts encountered by the first hearing officer with subsequent hearing dates. The record does not contain any evidence indicating that the Local School System could not have proceeded on the originally scheduled hearing date, or that it could not have completed all necessary actions within the prescribed time lines had the original hearing date been adhered to. The Hearing Officer, therefore, concludes that the Local School System did not violate any of the time lines.

[2]The parents allege, through affidavit filed by counsel, that the local school superintendent acted on his own to adopt the findings of the regional hearing officer because his letter was written before the Local Board met. The Hearing Officer does not reach any conclusions regarding the initial notice by the local school superintendent because the other conclusions reached herein preclude the necessity of determining if the actions were proper.

The regional hearing officer reviewed the evidence presented at the hearing in the form of sworn testimony and documents. The regional hearing officer then concluded that the annual review signed by the parents and the special education director became the IEP for the 1979-80 school year. The regional hearing officer also found that the Local School System could provide an adequate program and was not responsible for any private school expenses incurred by the parents. The regional hearing officer recommended that the school system make every effort to reestablish communications between the school system and the parents, and the school system should make reasonable efforts to provide assistance to the parents and the child if the parents agreed to return the child to the school system.

A review of the record shows that the Student is presently eight years and eleven months old. The Student has severe receptive aphasia characterized by hyperactivity, poor receptive and expressive language skills, delayed emotional and social adjustment, and poor gross motor coordination. After a review by the Local School System in 1978, the Student was placed in the Cerebral Palsy Center in Chattanooga, Tennessee for the 1978-79 school year. During the time he was in the Cerebral Palsy Center, the Student did not receive any academic training. The Local School System was notified in May, 1979, that the Student could no longer be served by the Cerebral Palsy Center

because of his age. The parents were notified that a meeting would be held on June 5, 1979 for the purpose of reviewing the Student's situation.

The Student's parents met with the special education director on June 5, 1979. It was decided that there was a need for additional testing of the Student before an IEP could be prepared. The Local School System agreed to pay for an evaluation, which the parents proceeded to arrange. The Student was evaluated on July 5, 1979. The report of the medical doctor was sent to the parents and received by them on July 25, 1979. A copy was also sent to the Local School System.

The parents did not receive any information from the Local School System and on August 17, 1979, the parents called the special education director to determine what actions were to be taken. A meeting was arranged to take place on August 22, 1979, the day before school was to begin. At the August 22, 1979 meeting, which was attended by the special education director, the parents, and a speech therapist, the special education director presented what he testified was a list of "suggestions" to serve as the basis for the preparation of an IEP. The special education director recommended that the Student be placed in an educable mentally retarded ("EMR") class within the school system. The parents disagreed with the Student's placement in the school system the next day because they

felt the test results were inconclusive and contradictory. Additionally, under their assumption that the "suggestions" constituted the IEP, they felt the IEP was incomplete. They therefore refused to place the Student in the school system the next day. The special education director then informed them that if they did not have the Student in school the next day, the school system would be aware of the fact and would have to take whatever appropriate action it needed to take under the Compulsory Education Act.[3] Fearing legal action, the parents thereafter enrolled the Student in a private residential program in Atlanta. This placement was based upon the recommendation of the medical doctor who had evaluated the Student on July 5, 1979.

The Student was given another series of tests when he was admitted to the private residential school. It was discovered for the first time that the Student was aphasic. An EMR placement, thus, was not an appropriate placement for the Student. Additionally, he needed substantially more speech therapy than had been recommended by the special education director.

There was no contention during the course of the hearing by the Local School System that an IEP was ever prepared for the Student. It is also clear from the record

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[3] Ga. Code Ann. §32-9914 provides that any parent who violates the provisions of Chapter 32-21 relating to compulsory school attendance shall be guilty of a misdemeanor and subject to a fine not exceeding $100 or imprisonment not to exceed 30 days, or both.

that the previous IEP prepared for the Student prior to his admittance to the Cerebral Palsy Center could not serve as the basis for placement because he could no longer be accepted at the Cerebral Palsy Center and the IEP did not contain any provisions for academic training. The regional hearing officer's finding that an IEP had been prepared by the Local School System is thus not supported by the evidence contained in the record and was directly rebutted by the witnesses for the Local School System.

PART III

CONCLUSIONS OF LAW

The regulations promulgated under the provisions of P.L. 94-142 require that an IEP must be developed by the local school system for each handicapped child before placement is made in a public or private school program. 45 C.F.R. §121a.341. The IEP must be in effect before special education and related services are provided to the student. 45 C.F.R. §121a.342. An annual review for the purpose of revising the IEP must be held. 45 C.F.R. §121a.343(d). The parent, the teacher, and a representative from the local school system must participate in the review. 45 C.F.R. §121a.344. The IEP must contain a statement of the child's present levels of educational performance, a statement of annual goals and short-term instructional

objectives and a statement of the specific special educational services to be provided to the student. 45 C.F.R. §121a.356. See also Georgia Special Education, Annual Program Plan, Public Law 94-142, Final FY 80, Part VI, pp. 29-33.

In the instant case, the Local School System did not prepare an IEP for the Student prior to the beginning of the school year. Additionally, the proposed EMR placement of the Student would not have been appropriate because it was later determined that the Student was aphasic. The Hearing Officer, therefore, concludes that the Local School System could not provide a free appropriate public education for the Student at the beginning of the school year.

The findings and conclusions of the regional hearing officer are not supported by the record. As pointed out, above, the review of the previous IEP could not serve as the basis for an IEP for the 1979-80 school year because the Student no longer could attend the institution and the IEP did not provide for any academic training. The insistence by the Local School System throughout the hearing that the Student would be provided anything he needed also does not establish the existence of an IEP or whether the Local School System could provide an adequate education. The insistence does evidence an effort and willingness on the part of the Local School System to abide by the regulations even though there was a failure to begin the review

until the day before school began. If the Student had been new to the school system, some delay in placement would have been permissible, but the Student was already receiving special education services and the Local School System is required to hold the individualized planning conference early enough so that the IEP is developed by the beginning of the school year. Georgia Special Education Annual Program Plan, Public Law 94-142, Final FY 80, Part VI, B, 3. The only evidence that an EMR placement might be appropriate came from the July 5, 1979 evaluation, but the examiner recommended further testing. It was undisputed at the hearing at an EMR placement would be inappropriate for a child with aphasia. The Hearing Officer, therefore, concludes that the evidence in the record does not support the findings or recommendation of the regional 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 Local School System could not provide an appropriate education for the Student at the beginning of the school year and could not have made a placement of the Student because an individualized education program had not

been prepared. The Hearing Officer, therefore, recommends that the decision of the Murray County Board of Education and the regional hearing officer's recommendation be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer