STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: SHAWN G., : CASE NO. 1979-28

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 Baldwin County Board of Education herein appealed from is hereby affirmed.

Mr. Stembridge abstained.

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: SHAWN G.	:	CASE NO. 1979-28
	:	
	:	REPORT OF
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Shawn G. (hereinafter "Student") from the decision of the Baldwin County Board of Education (hereinafter "Local Board") upholding and adopting the recommendation of the regional hearing officer that the use of a portable classroom building for a severely mentally retarded ("SMR") class did not violate P.L. 94-142 or Section 504 of the Rehabilitation Act. The Student's parents contend that the use of a portable classroom unit is a per se violation of P.L. 94-142 and section 504 of the Rehabilitiation Act of 1973. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

By a letter dated August 28, 1979, the Student's parents requested a hearing on whether the Student's SMR

class should be moved into a portable classroom unit attached to an elementary school. By agreement of the parties, the hearing was held before a regional hearing officer on October 8, 1979. The regional hearing officer issued her report on October 15, 1979 and recommended that the class be moved to the portable classroom unit. The Local Board approved and adopted the recommendation of the regional hearing officer on October 24, 1979. The Student's parents filed their appeal with the State Board of Education on November 8, 1979. The Local Board filed a motion to dismiss because the appeal was filed directly with the State Board of Education and not with the local superintendent.

The regional hearing officer found that all aspects of the due process procedures had been complied with prior to the hearing, and that the full disclosure requirements were met five days prior to the hearing. The regional hearing officer also found that the SMR class was temporarily being conducted in an isolated and crowded classroom located in a former locker room under a gymnasium. The local school system proposed to erect a portable classroom beside an elementary school in which to conduct the SMR classes. After the receipt of testimony, documentary evidence and making an on site inspection the regional hearing officer recommended that the SMR class be removed as quickly as possible to the portable unit.

A review of the record shows that the SMR class was located in a gymnasium which was located three flights of stairs down from the regular classroom building. The school system conducted a review of all existing classroom facilities in order to obtain more suitable facilities sufficiently large to accomodate the class and necessary equipment. Due to the lack of bathroom and plumbing facilities and the size of the existing classrooms, the school system determined that erection of a portable classroom unit adjacent to and connected to an elementary school would be the most appropriate route to take. The Local School System obtained the concurrence of the State Department of Education for the erection of the portable classroom unit.

PART III

CONCLUSIONS OF LAW

The Student's parents contend that the regional hearing officer erred by comparing the existing facilities with the portable classroom unit and determining that the portable classroom unit was the most appropriate place to conduct the SMR classes. As contended by the Student's parents, the issue in the case was whether the use of a portable classroom which is not a part of the regular school building violates the least restrictive requirements of

P.L. 94-142 and the regulations thereunder and the regulations under section 504 of the Rehabilitition Act of 1973.

In describing least restrictive environment, P.L. 94-142 provides:

> "Each public agency shall insure:
>
> (1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and
>
> (2) That special classes, separate schooling or other removal of handicapped children from the regular eduational 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 parents also point to the Georgia Special Education, Annual Program Plan, Public Law 94-142, Final FY 80, at page 48, which provides in part:

> "To the maximum extent appropriate, exceptional children in Georgia shall be educated with children who are not handicapped. Special classes, separate schooling or other removal of handicapped children from the regular class environment shall occur 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 satisfactorily achieved."

The parents contend that these sections of law require all SMR classes be contained within the regular classroom facility and that an attached building violates the law.

The Hearing Officer finds nothing in the law, or in the language of any of the regulations, which prohibits the use of attached classroom facilities for handicapped children.

There was evidence presented that in the instant case, the Student will have an opportunity to interact with non-handicapped children during the course of the regular school day in the library, the lunchroom, on the playground, and at special events. The evidence also shows that the portable classroom unit will be attached to the existing building. It thus becomes a part of the existing building. Based on the evidence in the record, the Hearing Officer does not see that there is any degree of isolation that would rise to the level of a violation of P.L. 94-142 or any of the federal and state regulations thereunder.

The Hearing Officer is of the opinion that the desireability of using portable classroom facilities for any students is a decision the local boards of education must make. The particular building materials, design, equipment, and utilities to be used in classroom construction are not dictated by P.L. 94-142. The only constraint faced by a local board of education is that the facilities for handicapped children not be isolated; the opportunity to be educated with non-handicapped children to the extent possible must exist. But where, as in the instant case, there is immediate ready access to the remainder of the

school building and non-handicapped students, the Hearing Officer concludes that a per se violation of public law 94-142, and the related federal and state laws and regulations thereunder, does not exist.

The Georgia Special Education, Annual Program Plan, Public Law 94-142, Final FY 80, Part VII, F, 3, a, (1) provides that:

> "Any party requesting a State review shall send a written or electronic verbatim record of the proceedings to the State Superintendent of Schools. The party shall include a statement distinctly setting forth the questions and issues involved and the reasons why the decision appealed is alleged to be erroneous. The appeal must be filed within 30 calendar days following the decision at the local level."

Ga. Code Ann. §32-910 provides that an appeal "shall be filed with the local superintendent within 30 days of the decision of the local board. . . ." The Appeals Policy of the State Board of Education also requires an appeal to be filed with the local superintendent within 30 days of the decision. Policy 05-316. There is, therefore, some room for confusion because the Annual Program Plan states the appeal is sent to the State Superintendent of Schools without mentioning the further requirement imposed by Ga. Code Ann. §32-910 that the appeal be sent to the State Superintendent of Schools through the local superintendent. Since the appeal in the instant case was timely filed with the State Board of Education, and counsel for the Local

Board was given notice of the appeal but did not raise the issue until after the thirty days had expired, the Hearing Officer concludes that the appeal should not be dismissed.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the brief submmitted by counsel for the Student's parents, the Hearing Officer is of the opinion that the use of a portable classroom facility does not violate the provisions of Public Law 94-142 or any of the related federal and state laws and regulations thereunder. The Hearing Officer, therefore, recommends that the decision of the Baldwin County Board of Education adopting the recommendation of the regional hearing officer be sustained. The Hearing Officer further recommends that the State Board of Education should cause all regional hearing officers to be made aware of the requirements of Ga. Code Ann. §32-910 regarding the filing of appeals to the State Board of Education through the local superintendent.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer