

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DREW P.

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:

CASE NO. 1979-30

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 the Hearing Officer are adopted and made the findings of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the Clarke County Board of Education is required to provide the same educational placement services during the appeal process; and

DETERMINES AND ORDERS, that the decision of the Clarke County Board of Education is hereby affirmed, provided the psychoeducational services offered by the Clarke County School System are provided.

This 10th day of January, 1980.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: DREW P.	:	CASE NO. 1979-30
	:	
	:	REPORT OF
	:	HEARING OFFICER

PART I
SUMMARY OF APPEAL

This is an automatic appeal to the State Board of Education by the parents of Drew P. (hereinafter "Student") from a decision by the Clarke County Board of Education (hereinafter "Local Board") not to accept the recommendation of the regional hearing officer concerning the Student's special education placement. The Local Board contends that the Student will receive a free, appropriate public education if placed in the regular severely mentally retarded ("SMR") class without psycho-educational services as decided by the regional hearing officer. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II
FINDINGS OF FACT

On August 28, 1979, the Student's parents objected to the proposed placement of the Student in the severely mentally retarded ("SMR") class in the public school system and requested a hearing under the provisions of Public Law 94-142 and its regulations (45 C.F.R. Part 121a.). The hearing before a regional hearing officer began on September 15, 1979 and concluded on October 26, 1979. The regional hearing officer issued a report on November 5, 1979. The Local Board met on November 19, 1979 and entered its decision not to follow the recommendations of the regional hearing officer. An appeal to the State Board of Education followed on December 5, 1979.

The regional hearing officer concluded that the program offered by the school system was not appropriate in that it did not include a psychoeducational module. The regional hearing officer also concluded that the school system had changed the Student's educational placement for the 1979-80 school year before the proper procedures had been completed. These conclusions were based on the regional hearing officer's findings that the Student had been receiving psychoeducational services in an extended day program. The Student was released from

the residential facility because he no longer met the criteria for admittance. The Local School System placed him in an elementary school setting which did not provide the psychoeducational services. Additionally, the elementary school program did not provide for extended day care of the Student.

The regional hearing officer also found that the Student's primary handicap was not known, but the Student is functionally severely mentally retarded and positively responds to the same methods used for teaching the severely mentally retarded which establishes a need for a behavior disorders program. The Student also needs to be in a highly structured environment.

A review of the record supports the findings of the regional hearing officer. The evidence shows that the Student, who is now nearly nine years old, was examined by a child psychiatrist before he was two years old and found to be developing at a slow rate. Continuous testing since that time has been conducted by several agencies and experts. Some of the experts have diagnosed the Student as autistic, but the consensus of opinion is that the Student is severely mentally retarded and any autistic traits are secondary to the primary handicap. The experts also testified that the programs presented to both autistic children and SMR children are essentially the same in that both types of children require a very structured

setting with primary emphasis on behavior control through consistent and persistent correction techniques. The programs presented to both types of children, rather than being mutually exclusive, are very similar if not the same.

The Student was initially placed in a public-supported pre-school program. While in this program, he also received psychoeducational services from another institution. He did not make any substantial progress in the program and his parents requested the Local School System to place him in the public school program when he was six years old. The Local School System determined that it could not adequately serve the Student during the 1977-1978 school year because it did not have any programs available in the public schools. The Local School System, therefore, arranged for the Student to be placed in the Georgia Retardation Center. The Student's parents objected to the placement in the Georgia Retardation Center and requested a hearing on the matter. The hearing resulted in a decision that the placement in the Georgia Retardation Center was appropriate. As an accomodation to the Student's parents, he was placed in the residential program of the Retardation Center even though his individualized education plan ("IEP") did not recommend residential services.

In May, 1979, the Student's parents were notified that the Student would be unable to attend the Retardation Center. The school system was also notified and began the placement process for the 1979-1980 school year. An IEP was prepared for the Student in May, 1979. On August 21, 1979, the Student's parents objected to removing him from the Retardation Center and placing him in another program. When the school year began on August 27, 1979, the school system placed the Student in an SMR class in an elementary school with the same teacher he had been receiving instruction from when he was in the Retardation Center.

The Student's IEP for the 1979-1980 school year called for the Student to receive instruction in an SMR program in the elementary school. The IEP did not provide for any psychoeducational services or any services beyond the regular school day. It did provide for support from a behavior disordered teacher. The IEP for the previous year provided for severely emotionally disturbed ("SED") instruction and psychoeducational services.

PART III

CONCLUSIONS OF LAW

The Local School System contends that the Student should be placed in an SMR class in the elementary

school where other students will be available in order for him to develop his social interactions. The School System maintains that the Student has progressed and is now ready for greater social contact with others. The School System also maintains that the elementary school program represented the least restrictive environment for the Student.

The Student's parents contended the Student requires residential care. They also contended that the Student is autistic and placement in an SMR class was inappropriate. They believe he should remain in an SED program with emphasis on behavioral disorder. The parents also argued that the Student's placement had been changed by the School System without due process being followed.

The regional hearing officer decided that the Student's placement had been changed because he was no longer receiving psychoeducational services and was not receiving extended day services. The change from a residential setting did not represent a change in placement. The Local Board argues that the placement was not changed and the parents were afforded due process. In support of the argument that the placement was not changed, the Local Board points out that the same IEP is being used as in 1978-1979 and the same teacher is teaching the Student. The Local Board also argues that due process was followed because a hearing was granted within 15

days after the parents voiced their objections.

The evidence in the record supports the finding of the regional hearing officer that the placement was changed. The extended-day services are not a part of the program presently being provided to the Student. It also appears that the Student is not receiving the psycho-educational services he received during the prior year, although such services were orally offered to the parents. The record does show that the Student was in an SED class during 1978-1979 and was being taught by the same SED teacher at the time of the hearing. The change from a residential setting did not represent a change in placement because the residential program was not a part of the IEP and arose as a result of contacts by the parents with the Retardation Center. There does not appear to have been any active violation of the due process rights of the parents by the Local School System. The Local School System's proposals were given to the parents approximately three months before the parents indicated any dissatisfaction. The parents' dissatisfaction was expressed the week before school began and the Local School System reacted by assigning the same teacher and offering the psychoeducational services. The Local School System, however, did not provide for an extended-day program. The Hearing Officer, therefore, concludes that the Local School System should provide

extended-day and psychoeducational services during these proceedings because a student's placement cannot be changed until a final decision has been entered. 45 C.F.R. §121a.513.

The remainder of the regional hearing officer's decision, which concerns the placement proposed by the Local School System appears to support the School System's recommendation except for the hearing officer's determination that a psychoeducation module should also be in the program. The hearing officer did, however, state that "the BD instructional approach used in 1978-79 should be the expertise of the instructional staff. . . ." Since this portion of the hearing officer's recommendation is subject to interpretation, the Hearing Officer believes a review of the record is necessary.

The record shows that the Local School System was implementing a behavioral disorders approach to the instruction of the Student. The teachers assigned, or to be assigned, to the Student accepted the behavioral disorders approach to their instructional efforts. The regional hearing officer did not find that the teachers to be assigned to the Student were incompetent or unqualified. The assignment of teachers to specific programs is not a consideration of Public Law 94-142, but is a function that rests with the Local Board. Ga. Code

Ann. §32-901. A teacher's competence may impact on the quality of the instruction received, but this is simply a fact which confronts every student, handicapped or non-handicapped. In the absence of any finding that the teachers to be assigned to the Student were unqualified under Georgia laws and regulations to maintain their teaching certificates, the Hearing Officer concludes that the assignment of the teachers is the prerogative and duty of the Local Board which is not controlled by Public Law 94-142. The hearing officer's statement, therefore, is merely an observation for consideration by the Local Board.

The observational quality of the regional hearing officer's decision is also reflected in his statement that "extended-day activities should be considered. . . ." This does not impose any requirement on the Local Board to provide an extended day program, but it does state that the evidence indicates that an extended-day program, while not necessary in order for the program to be considered adequate, might prove to be of some additional assistance to the Student.

The regional hearing officer did decide that the Student's placement required the inclusion of a psychoeducational module in order to be appropriate. The record shows that the Student has been receiving psychoeducational services for at least the previous three

years. There was no evidence to indicate that such services should be terminated except by the negative inference resulting from the exclusion of such services from the proposed IEP. There was, however, some evidence that the psychoeducational services should be maintained and were required by the Student. The State Board of Education follows the rule that if there is any evidence to support the findings of the trier of fact, then such findings will not be disturbed upon review. Antone v. Greene County Board of Education, Case No. 1976-11. The Hearing Officer, therefore, concludes that there was evidence to support the regional hearing officer's decision that a psychoeducational module should be included in the Student's program.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions and the record submitted, the Hearing Officer is of the opinion that (1) the placement of the Student during the appeal process should have included extended-day services and a psychoeducational module, and (2) the Student should receive psychoeducational services in addition to the program proposed by the Local School System. The Hearing Officer is also of the opinion that

the decision of the regional hearing officer does not impose any requirements upon the Local School System in addition to the psychoeducation services. The regional hearing officer's decision does not require that residential services be offered. The Hearing Officer, therefore, recommends that the decision of the Clarke County Board of Education to reject the decision of the regional hearing officer be reversed and a psychoeducational module added to the Student's IEP.



L. O. BUCKLAND
Hearing Officer