NOV 23 1982

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: WESLEY B. :

: CASE NO. 1982-19

: DECISION OF STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parent of Wesley B. from a decision of a regional hearing officer that the Murray County School System (hereinafter "Local System") could provide an appropriate public education in a learning disabilities classroom. The primary grounds for the appeal were that the regional hearing officer erroneously placed the burden of proof on the parent and failed to take into consideration evidence which showed that Wesley B. (hereinafter "Student") requires residential care on an extended-year basis. The Hearing Officer holds that the decision of the regional hearing officer is sustained.

PART II

FINDINGS OF FACT

The Student is presently eleven years old and enrolled in a private residential program pursuant to an individualized

educational program ("IEP") prepared for the 1981-1982 school year. The student suffers from aphasia which is manifested by receptive and expressive language difficulties. The Student requires constant repetition and example in order to learn any task. He has difficulty transferring concepts from the specific to the general and all of his activities must be closely monitored.

A placement committee meeting was held on July 16, 1982. The committee could not reach agreement on the Student's placement, whether the Student required an extended-day program, and whether the Student required recreational therapy. The Local System requested a hearing before a regional hearing officer in order to determine if residential placement was required in order to provide the Student with an appropriate education. The hearing was held on August 31, 1982, and the regional hearing officer issued her decision on September 22, 1982. The regional hearing officer held that residential placement was unnecessary and that the program offered by the Local System could provide the Student with a free appropriate public education.

The regional hearing officer's decision was based upon her findings that the Student suffered from a severe learning disability, but the Student could be given an appropriate program in a less restrictive environment without any harm resulting in the move from a residential program to the

self-contained learning disability class offered by the Local System. The regional hearing officer determined that the Student exhibited disabilities which were similar to the students who were already enrolled in the self-contained learning disabilities class, and the teacher assigned to the program was qualified and capable of handling his problems. Additionally, the program available to the Student in the self-contained classroom would be similar to the one offered in the private residential program. The regional hearing officer acknowledged that there was evidence that an extended-day program had been recommended by many of the witnesses, but held that the evidence did not dictate that an extended-day program was necessary, only that it was "best" or "convenient".

The regional hearing officer decided that the placement committee needed to complete the Student's individualized educational program, but that the completed program could take into consideration that an extended-day program was unnecessary, and that the learning disabilities class would be an appropriate placement. The Student's parent appealed this decision to the State Board of Education on October 21, 1982.

PART III

CONCLUSIONS OF LAW

The Student's parent appealed the regional hearing officer's decision on the grounds (1) the regional hearing officer erroneously placed the burden of proof on the parent; (2) the regional hearing officer overlooked evidence which showed that the Student required a residential program and could not be served in a learning disabilities class which did not have an extended-day component; (3) the regional hearing officer overlooked evidence that the Student would be harmed if moved out of a residential program, and (4) the regional hearing officer erroneously decided that the program offered by the Local System was appropriate when the Student's IEP had not been completed. Based upon these contentions, the Student's parent has asked for reversal of the regional hearing officer's decision.

The purpose of the hearing before the regional hearing officer was to decide if a residential component was necessary for the Student, and whether it was necessary to include recreational therapy in the Student's program. During the placement committee meeting, the parties were able to agree on all of the long-range and short-range goals with the exception of whether the Student required recreational therapy. The parties also did not agree on the duration of the services to be provided and where the Student was to be placed.

The Education for All Handicapped Children Act of 1975, 20 USCA §1401, requires local school systems to provide an appropriate educational program in the least restrictive environment for all handicapped children. 20 USCA §1412(5). If a parent desires to have a child placed into a program which is more restrictive than the program offered by the local system, then the student's parent has the burden of proving that the more restrictive environment is necessary. A local school system is not required to provide a handicapped child with the "best" available program. The requirement exists only for an appropriate program.

In the instant case, it was shown that the Student required a highly structured learning environment which was "language based", i.e., involved oral instructions with examples rather than written instructions. The severe learning disabilities program proposed by the Local System can provide the Student with this type instruction.

The evidence showed that the Student benefitted from having recreational therapy after the normal school hours. The recreational therapy was described as engaging in such activities as bowling, game playing, and group sports under the direction and supervision of a recreational therapist who provided reinforcement of the skills learned during the day. The Local System has within its program provisions for providing family help in order to reinforce the skills learned during the day. The Student's parent maintains that the

same level of reinforcement that would be available in the private residential program cannot be provided in the home. In order to warrant keeping the Student in a more restrictive environment, however, there would have to be a showing that the Student was unable to learn in the absence of the reinforcement provided by the recreational activities available in the private residential program. As the regional hearing officer correctly pointed out, since the burden of proof is on the parent who wants to place a child in a more restrictive environment, there was no evidence that the Student would be unable to learn or that the Student would be harmed by going into the learning disabilities program offered by the Local System. The Hearing Officer, therefore, concludes that the extended-day program is not required in order to provide the Student with an appropriate educational program. Also, one of the reasons for a residential program was the necessity of the extended-day activities that were available. The Hearing Officer, therefore, also concludes that the private residential program is not necessary for the purpose of providing the Student with an extended-day program.

The Hearing Officer, however, is of the opinion the Student's placement cannot be changed because the Student's IEP has not been completed. The IEP cannot be completed until evidence has been presented to show the extent of the

extended-year program necessary for the Student. The Student has been enrolled in an eleven-month program for the past three years, and there was evidence that the Student regressed during the period he was not in school. The degree of regression must be determined. It must also be determined whether the Student can recover from the regression, or whether the regression prevents him from learning. See Ga. Assn. of Retarded Citizens v. McDaniel, 511 F. Supp. 1263 (N.D.GA., 1981). At present, the record does not contain any evidence concerning the level of services, if any, the Student requires during the summer months. Because the level of services has not been established, it is not possible to determine if the Local System can provide the services that may be found to be necessary. The record only shows that if the Student requires a summer program, the Local System will be able to provide three hours of daily instruction. The Student's placement should not be changed until the level of needed services has been determined and it has been established that the Local System can provide the required services.

In order to establish that it can provide the required services, the Local System does not have to show that it already has a program in place. It must, however, show that the necessary program will be instituted. It is not enough to say that the Local System will do whatever is found to be necessary. There must first be a determination made of what is necessary. Only then can it be established that the

Local System will be able to provide the services that will be required. Until then, it cannot be said that the Local System has an appropriate program for the student.

PART IV

DECISION

Based upon the foregoing findings and conclusions, the State Hearing Officer is of the opinion the Local System has not established the Student's needs for an extended-year program, and in the absence of such a determination, it cannot be held that the Local System has an appropriate educational program for the Student. Consistent with the decision of the regional hearing officer, further meetings of the placement committee must be held in order to determine the Student's summer needs and to complete the Student's IEP.

L. O. Buckland

L. O. BUCKLAND
State Hearing Officer