

STATE BOARD OF EDUCATION

STATE OF GEORGIA

COBB COUNTY BOARD OF	)	
EDUCATION,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO. 1985-6
	)	
SEAN C.,	)	
	)	DECISION OF
Appellee.	)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the Cobb County Board of Education (hereinafter "Local Board") from a decision of a regional hearing officer that the parents of Sean C. (hereinafter "Student") had a right to be present at an eligibility meeting concerning their child. The appeal is based upon the Local Board's contention that the Regional Hearing Officer was in error because there is no basis in Federal or State law or regulations and no basis in fact for requiring the parents' attendance, that the decision was further in error because the Regional Hearing Officer concluded the IEP and eligibility category prepared by the Local Board were appropriate, thus precluding the necessity of another eligibility meeting, and that another eligibility report does not need to be prepared because the failure to allow the parents to participate is *Deminimus Non Curat Lex*. The parents contend

the Regional Hearing Officer's decision requiring another eligibility meeting with them present should be sustained and that the Regional Hearing Officer did not approve of the MOMH label on the Student.

## PART II

### FACTUAL DISCUSSION

The Student in this case is a 14 year old handicapped male student, identified in need of special education services. He has been provided special education services by the Local Board for the past four years. During the 1983-84 school year, the Student's IEP placed him primarily in classes with students classified as mildly mentally handicapped (hereinafter "MMH"). An IEP was developed by a placement committee in May, 1984 which provided for seven periods of instruction in an mildly mentally handicapped class (hereinafter "MIMH"), one period per day in the moderately mentally handicapped class (hereinafter "MOMH") and one hour per week of speech therapy.

On July 31, 1984, the Student was given a psychometric evaluation by the school system psychologist. This evaluation was performed as a part of the requirement that a student be re-evaluated at least once every three years. The Local Board's psychologist reported scores on various IQ tests which, without consideration of the Student's adaptive behavior, would place the Student in the range of moderately retarded children according to State Department of Education Rules and Regulations. (Georgia Department of Education Rules and Regulations IDDFd 3-18).

Subsequent to the psychological report, an eligibility meeting was held to determine whether the Student was eligible for special education services and, if so, in what category. This meeting was conducted with five school system staff members present but the parents were not allowed to attend, even though they requested to be present. The State Board of Education committed to the U. S. Federal District Court in Ollie Marshall v. State of Georgia, C.A. No. 482-233 (U.S.D.C. Southern District Court, Savannah Div. 1984) that it would have local boards of education complete eligibility reports on all children in special education. This commitment was made as a good faith effort by the State to show the Court the State would improve the method for determining whether a student should be in a special education placement. Presumably, this creates a process of first determining whether the child is handicapped and what category his handicap is in before the placement committee considers the individual child's needs to determine what the placement should be. Based upon the State commitment to the Court, the Local Board in this case apparently initiated the process of eligibility determinations for the Student.

The eligibility team made a determination that the Student was eligible for MOMH services. They based their decision on the Student's psychological test scores which were well within the range established by the State for the MOMH category and on the assessment of the Student's adaptive behavior.

Subsequent to the eligibility determination, a new placement committee was convened and a new IEP was developed for the Student.

This IEP was different from the previous IEP in that the Student was to receive math instruction in an MOMH class and have his last period of the day split, so that instead of services being received solely in an MIMH class, one-half of that period would be spent in an MOMH class. There was testimony that the last period was split so that the Student would be receiving a majority of his program in the MOMH program for which he was eligible.

The parents requested a hearing October 31, 1984. The hearing was delayed by the parties and was not held until March 19, April 2, and April 16, 1985. The Regional Hearing Officer issued a decision on May 10, 1985.

The Regional Hearing Officer found that, in making the eligibility determination, the team labeled the Student "MOMH" and effectuated a change in placement of the Student within the meaning of 20 U.S.C. 1415(b)1(c). The Regional Hearing Officer further concluded that, because the meeting amounted to a placement meeting, the parents were entitled to notice and to attend the meeting. The Regional Hearing Officer based the finding that the eligibility meeting amounted to a placement meeting on statements made by the Local Board's witnesses during the hearing and the testimony of the parents. The witnesses who made up the eligibility team testified that the changed eligibility category leads to new ways of serving the Student, that the MOMH classification was extremely important because of the child's future high school placement, and that MOMH was the most appropriate

placement. The parents testified that they were told the new classification, MOMH, would require the Student to spend better than 50% of his time in MOMH placement as opposed to MIMH placement.

The Local Board appealed the Regional Hearing Officer's decision by letter of May 31, 1985 with the State Board receiving the appeal June 4, 1985.

The State Hearing Officer granted an extension to Appellee on the time required to submit a brief necessitating an extension on the due date for the State Hearing Officer's decision to July 15, 1985.

### PART III

#### DISCUSSION

Appellant argues on appeal that there is no basis in State or Federal law for requiring the attendance of the parents during eligibility report preparations, that the decision was further in error because the Regional Hearing Officer concluded the IEP and eligibility category prepared by the Local Board were appropriate, and because the failure to allow the parents to attend the meeting was, if a violation at all, of a minor nature and does not warrant a new eligibility meeting.

Appellant's first argument, that there is no basis in State or Federal regulations for requiring the attendance of the parents during eligibility report preparations, does not take into account the finding by the Regional Hearing Officer that the

meeting which the school officials called an eligibility meeting amounted to a placement committee meeting and effected a change in placement. Appellant notes that an eligibility report has not been required by State Regulations in the past, except in the case of specific learning disabilities and that, there, the parents were not mentioned as one of the parties composing the eligibility team. The regulations concerning specific learning disabilities neither require nor prohibit parental attendance at eligibility meetings. However, eligibility meetings to determine if there are specific learning disabilities would not, or should not, constitute placement meetings where decisions on the types of services, the method of provision of services, and the place of provision of services are made. In the present case, the Regional Hearing Officer determined that these types of placement decisions were actually made at the Student's eligibility meeting determining the Student was MOMH as opposed to MIMH. The Regional Hearing Officer reached this conclusion based upon the testimony of witnesses for the Local Board which generally indicated the designation MOMH would amount to a placement decision for the Student. The witnesses, including the school system psychologist, indicated that the placement decision was made during the eligibility meeting.

It is clear under the Federal and State regulations that parents are to be provided written notice before the school system proposes to initiate or change the identification, evaluation, or educational placement of a child and that parents are allowed

to be present at all placement committee meetings where educational placement will be determined. One of the major purposes of the Education for All Handicapped Act is to assure the opportunity for parental participation in planning the child's educational program. If, as here, the evaluation meeting results in a placement decision, then the parents must be permitted to attend.

The State Hearing Officer is bound to support the decision of the Regional Hearing Officer if it is supported by substantial evidence and is consistent with the law and rules and regulations promulgated pursuant thereto. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. The Regional Hearing Officer made the determination that the eligibility meeting held for the Student constituted a placement committee meeting. There was substantial evidence to support that determination in the form of testimony by the school personnel involved in the eligibility meeting as well as the parents. Thus, the Regional Hearing Officer's decision that the parents should have been notified of the eligibility meeting and allowed to attend it is not subject to reversal based upon Appellant's argument that there is no such requirement with respect to eligibility meetings.

Appellant's second and third arguments on appeal are that the Regional Hearing Officer erred in deciding that another eligibility meeting should be held because of the conclusion that

the IEP and eligibility category prepared by the Local Board were appropriate and that the Local Board's error was too insignificant to matter. The Regional Hearing Officer found nothing wrong with the IQ tests performed but did find that the exclusion of the parents from the eligibility meeting could have affected their ability to challenge the adaptive behavior portion of the testing which resulted in the MOMH label.

Thus, the parents may have been unable to present evidence which, if they had been allowed to attend, might have affected the eligibility decision or at least given them an argument on appeal. The State Hearing Officer is not prepared to reverse the remedy ordered by the Regional Hearing Officer. The only remedy the Regional Hearing Officer reasonably had available was to order that which was improperly done in the beginning to be redone. The failure to include the parents in the placement process is not of such a minute importance as to be de minimus. In fact, including the parents in the placement process is one of the major benefits of the Act. Thus, the meeting should be held with the parents given the opportunity to have input.

#### PART IV

#### CONCLUSION

Based upon the record presented, the briefs of counsel, and the foregoing discussion, the State Hearing Officer is of the opinion that there is substantial evidence in the record to support the decision of the Regional Hearing Officer that the



parents should have been included in the eligibility meeting and that another eligibility meeting should be held because it amounted to a placement meeting. The decision of the Regional Hearing Officer, is, therefore

SUSTAINED.

This 15<sup>th</sup> day of July, 1985.

*L. O. Buckland*  
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L. O. BUCKLAND  
STATE HEARING OFFICER