

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DREW P.,)	
)	
Appellant,)	
)	CASE NO. 1985-28
v.)	
)	
CLARKE COUNTY BOARD)	
OF EDUCATION,)	
)	DECISION OF STATE
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents (hereinafter "Appellants") of Drew P. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Clarke County Board of Education (hereinafter "Local System") could provide the Student a free, appropriate, public education in the least restrictive environment. Appellants contend on appeal that the Regional Hearing Officer erred in his statement of the issue and in making several findings of fact and that, because of the errors, the decision of the Regional Hearing Officer is in error. The Local Board contends that the evidence supports the Regional Hearing Officer's decision and, therefore, it should be affirmed. For the reasons discussed below, the decision of the Regional Hearing Officer is hereby sustained.

PART II

FACTUAL BACKGROUND

The Student in this case is a fourteen year old male who, all parties agree, is entitled to special education services.

It is unclear as to whether the Student is autistic, mentally retarded, or both. He received special education services from the Local System from the time he was five years old until he was removed from the Local System's program in January of 1985, when Appellants placed the Student in a residential treatment program (hereinafter "current placement"). Several evaluations of the Student were conducted and the staff at the current placement concluded that their program was unable to provide a 1:1 staffing ratio which, in their opinion, the Student required. The current placement staff recommended an alternate placement in a residential treatment facility designed to meet the needs of an autistic adolescent such as the Student. Appellants requested an I.E.P. update by the Local System and asked that a residential placement for autistic children be provided by the Local System. The Local System refused to provide the requested placement and Appellants requested a hearing.

At the hearing, which began on April 12, 1985, the Student's mother testified, among other things, that the I.E.P. proposed for the 1984-85 school year provided for only nonacademic skills since academic skills were inappropriate for him (T-19). She also testified that the skills were the same types of skills as were provided in the current placement, although the current placement, in her opinion, provided training on a more intensive basis. The Appellants then reserved the right to present their expert witness by deposition and the Local System presented its case.

The Local System's witness testified that the Student behaved appropriately in school, and the Student's teacher testified that he was making progress towards meeting the objectives of his I.E.P. and towards being able to reside in a group home after the age of twenty-one. Appellants then presented the depositions of two expert witnesses who had evaluated the Student. Both experts concluded the Student was autistic and recommended 24-hour residential placement based upon their diagnosis of the Student. When asked if a 180-day program would be appropriate, one of the experts testified that if he were offered a choice, he would choose a program that was round-the-clock for twelve months a year. He further testified that in order to make the most of the Student's potential, a residential placement would be his choice for the Student. Appellants' other expert testified that, while the Local System's academics were appropriate, there were areas of life that the Local System's program could not address. She confirmed that, regardless of what was or was not being done for the Student in the Local System for 180 days a year from 8:00 or 8:30 in the morning until 4:30 in the afternoon, it was her opinion it would not be enough. Neither expert testified that the Student had regressed specifically, but both testified that children with autistic characteristics tend to regress more than other children.

The hearing was concluded on July 2, 1985 when the testimony of the Appellants' final expert witness could be taken.

The Regional Hearing Officer then issued his decision on July 27, 1985.

The Regional Hearing Officer decided that the Local System had a free and appropriate special education program in the least restrictive environment suitable to address the Student's needs as contemplated by P.L. 94-142, that his current residential placement was inappropriate, and that the Local System was not responsible for costs incurred by Appellants in the current residential placement.

Appellants appealed this decision by letter of August 7, 1985. The State Hearing Officer granted a requested extension of the timelines in which to issue a decision to allow additional time for the parties to file briefs. Appellants set forth their contentions by letter to the State Hearing Officer which was received on October 11, 1985. The contentions made in the letter form the basis of the appeal.

PART III

DISCUSSION

Appellants argue on appeal that the decision should be reversed because the Regional Hearing Officer mistated the purpose of the hearing and erred in the findings of fact. Appellants contend that the purpose of the hearing was to determine whether residential placement in an autistic treatment facility was the only appropriate educational placement. The Regional Hearing Officer stated that the hearing was petitioned

by Appellants because the Local System refused to pay expenses incurred as a result of Appellants' placement of the Student in the current placement because they believed the Local System was not providing and could not provide an adequate educational program to meet the Student's needs. Appellants contend that the Regional Hearing Officer misstated the purpose since they do not desire the current placement and do not think it is appropriate for the Student, but it is superior to the placement recommended by the Local System.

In addition to Appellant's argument that the Regional Hearing Officer misstated the issue, Appellants contend that many of the Regional Hearing Officer's Findings of Fact are in error. Appellants contend that the Regional Hearing Officer erred with respect to his finding of fact number three that "...Both parents were present during the development of the 1984-85 I.E.P. which noted that [the Student] had made a tremendous amount of progress in all areas of the school program, and [particularly] noticed (sic) increased and positive interaction with peers." Their argument is that this finding is not supported by the record because the same items listed on the 1985 I.E.P. were listed on the 1983 I.E.P. and because a three year old could have mastered those items in minutes.

Appellants contend the Regional Hearing Officer erred with respect to his finding of fact number seven that "...despite the fact that previous I.E.P.'s indicate progress in the [Local System] special education program, [the Student's] parents

withdrew him without notice in January 1985, and enrolled him in the [current placement]." It is their contention that the evidence does not support the argument that progress was made and the withdrawal was not without notice, because the Student's teacher knew the parents were seeking residential placement.

Appellants contend the Regional Hearing Officer erred with respect to his finding of fact number eight that "...when [the Local System] refused to accept responsibility for the cost of the [current placement], the parents requested a hearing." Appellants argue that this finding is incorrect because they desire placement in a residential treatment facility for autistic children and not in the current placement.

Appellants contend that the Regional Hearing Officer erred with respect to finding of fact number nine that "...neither [expert witness] stated that the program offered by the [Local System] was inappropriate." Appellants' position is that the record does not support the finding because one expert testified the program was not appropriate and also testified that, regardless of what the Local System did between 8:30 and 4:30 for 180 days, her opinion that the Student needs a residential treatment facility would not change.

Appellants contend that the Regional Hearing Officer erred with respect to finding of fact number eleven that "Petitioners admitted that [the Student] had broadened and maintained his skills in the" Local System's program. They maintain that the Student's teacher's testimony showed the Student did not progress

for two or three years, that he was not making any progress, and that they did not admit he had broadened and maintained his skills.

Appellants contend the Regional Hearing Officer erred with respect to finding of fact number twelve that the staff at the current placement ideally recommended a residential care facility specifically designed for the treatment of autistic children. Their position is the finding that they ideally recommended such a placement is incorrect because the minutes show that they found the Student required such a placement.

Finally, Appellants contend that the Regional Hearing Officer's decision and rationale were incorrect because they were based upon unsupported findings of fact. The Local System contends that there is substantial evidence to support the decision of the Regional Hearing Officer and, therefore, the State Hearing Officer is bound to affirm the decision of the Regional Hearing Officer.

The State Hearing Officer is of the opinion that Appellants' contention that the Regional Hearing Officer mistated the purpose of the hearing does not provide any grounds for reversal of the Regional Hearing Officer's decision. Under the regulations, Appellant is entitled to request a hearing regarding a refusal of the Local System to place the Student in a particular desired placement. However, the Regional Hearing Officer is entitled to state the issues as he understands them to be in

order of significance. In this case, before the issue of whether the only appropriate placement is a residential treatment facility for autistic children was reached, the Regional Hearing Officer had to decide whether the Local System was offering the Student an appropriate education. When that question was answered in the affirmative, then a determination has been made that the Local System is meeting its obligation with regard to placement and the Regional Hearing Officer did not need to address the question of whether placement in a residential autistic program was necessary.

Addressing each of Appellants' challenges to the Regional Hearing Officer's Findings of Fact, it is the State Hearing Officer's opinion that those challenges do not warrant reversal of the Regional Hearing Officer's decision. The Regional Hearing Officer's finding of fact number three only states that the parents were present during the I.E.P. meeting. Even if it were a finding of fact that tremendous development was made, there would be substantial evidence in the record to support that finding. The Student's teacher testified that the Student, based upon her experience of other handicapped children, made progress. The fact that the progress does not seem sufficient to the parents is not grounds for reversal. The parents did not present substantial evidence that progress was not being made. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer's finding of fact number three does not provide any grounds for reversal.

The Regional Hearing Officer's finding of fact number seven also does not require reversal. There was evidence that some progress was being made in the Local System's placement. Since the Regional Hearing Officer decided that the Local System's program was appropriate, the Local System is not required to pay for a private program selected by the parents, regardless of whether the parents give notice to the Local System. Notice of removal may not even have been required if there was a finding that a residential program was necessary. Cf., Burlington v. Massachusetts Dept. of Ed., _____ U.S. _____, 53 L.W. 4509 (1985). For these reasons, the issue of notice was not significant to the Regional Hearing Officer's decision.

Appellants are correct that the Regional Hearing Officer's finding of fact number eight is in error, but the incorrect finding does not warrant reversal. This finding goes only to why the hearing was requested and not the conclusion that an appropriate program was offered by the Local System.

While the Regional Hearing Officer's finding of fact that neither expert stated the program offered by the Local System was inappropriate is literally correct, the State Hearing Officer agrees with Appellants that the substance of at least one of the expert's testimony was that the Local System's program was inappropriate. However, the testimony by that expert did not show knowledge of what the Local System offered and the expert made the blanket statement that no matter what

the Local System did, it would be inappropriate as long as it was limited to the extended day, 180 day year. This statement is not supported by any evidence of regression and, even though it is the opinion of an expert, the Regional Hearing Officer is not required to accept it in light of the evidence to the contrary presented by the Local System.

Appellants' argument that there was error with respect to the Regional Hearing Officer's finding of fact number eleven is not supported by the record because the Student's mother did testify that the Student began to sit down and attend to things, he began to sign, he began to work on dressing skills, and broadened and maintained those skills. Thus, finding of fact number eleven is supported in the record as far as the skills mentioned above. While the Regional Hearing Officer used the phrase "broadened and maintained his skills", the State Hearing Officer concludes the Regional Hearing Officer used that phrase in reference to the specific skills mentioned by the mother in her testimony and the finding, therefore, is not incorrect.

Appellants' final disagreement with respect to the Regional Hearing Officer's findings of fact is that the staff at the current placement did not find placement at a residential treatment center for autistic children ideal but that they found such placement to be required. Appellant is correct that the

staff of that center did find such placement, in their opinion, to be required. However, the fact that the staff at the center found such placement to be required does not mean the Regional Hearing Officer is bound to find that such placement is required. The insertion of the word "ideally" into the finding appears to have been attributable to the Regional Hearing Officer's opinion and not his opinion of what the staff at the current placement said. While the finding is unclear, it does not require reversal of the Regional Hearing Officer's decision.

The State Hearing Officer would agree that the findings of fact, as stated by the Regional Hearing Officer, do create some confusion. However, the State Hearing Officer does not agree that the confusion caused by the wording of the findings of fact warrant reversal. The Regional Hearing Officer stated in the section labeled "Decision and Rationale" that the Student functioned socially and academically towards the goals set forth in his I.E.P. and that educational progress was clearly established. That is a finding of fact which supports the conclusion reached by the Regional Hearing Officer that the Local System was providing an appropriate education to the Student. Additionally, the Regional Hearing Officer used the admission by the mother that the Student broadened and maintained certain skills as a finding that the Student did broaden and maintain certain skills in the program offered by the Local System. This fact also supports the Regional Hearing Officer's conclusion that the program offered was appropriate.

The State Hearing Officer is bound to support the decision of the Regional Hearing Officer if there is substantial evidence supporting his decision. The testimony of the Student's teachers was consistent in that they did not see any difficulty in providing for the educational needs of the Student. The Student's primary teacher testified that the Student progressed in her class. No showing was made by the Appellant that the goals and objectives of the I.E.P. were in any way inappropriate. The experts presented by Appellants were not familiar with whether the program offered by the Local System had actually provided an educational benefit to the Student. The only testimony offered by Appellants which was based upon direct knowledge of how the Student progressed was that of the Student's mother. While she did not agree that the Student was making enough progress, she did admit that an educational benefit was being provided when she testified the Student broadened and maintained certain skills. Thus, there is substantial evidence in the record to support the decision of the Regional Hearing Officer.

PART IV

DECISION

Based upon the foregoing, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer that the

Local System could provide an appropriate program for the Student is supported by substantial evidence and any error made by the Regional Hearing Officer in his findings of fact does not warrant reversal. The decision of the Regional Hearing Officer, therefore, is hereby

SUSTAINED.



L. O. BUCKLAND
State Hearing Officer