

STATE BOARD OF EDUCATION
STATE OF GEORGIA

MICHAEL B.,)	
)	
Appellant,)	CASE NO. 1985-32
)	
v.)	
)	
COBB COUNTY BOARD)	
OF EDUCATION,)	
)	
Appellee.)	DECISION OF STATE HEARING OFFICER

PART I
SUMMARY OF APPEAL

This is an appeal by the parents of Michael B. (hereinafter "Student") from a decision of a Regional Hearing Officer that the program offered by the Cobb County School System (hereinafter "Local System") would provide the Student with an appropriate education in the least restrictive environment and that the current educational placement for the purpose of maintaining the status quo during the pendency of the appeal was the same as the proposed placement. The parents contend on appeal that the Local System did not show that the program offered was an appropriate program offered in the least restrictive environment, that the evidence showed the placement would harm the Student and that the current educational placement for the purpose of maintaining the status quo during the pendency of appeal would not be the placement offered by the Local System for the 1985-86 school year.

PART II

FACTUAL BACKGROUND

The Student is a sixteen year old male who has been receiving special education services from the Local System for many years. During the 1984-85 school year, the Student was placed in a self-contained Moderately Mentally Handicapped (MOMH) class at a middle school. The Student is classified as MOMH and the parents do not disagree with the classification. In March of 1985 the parents were notified by the Local System of a scheduled I.E.P. meeting to consider placement for the 1985-86 school year. The parents requested a delay in the I.E.P. meeting and the meeting was rescheduled for May 15, 1985. At that meeting, it was agreed that the Student should be served in a self-contained MOMH program and that the Student should move from a middle school to a high school setting (hereinafter "proposed placement"). The Student's mother, however, disagreed with the physical location of the proposed placement. The proposed placement was approximately a fifty to sixty minute ride one way. The Student's mother objected to the location of the proposed placement and requested a placement closer to her home. Because of this disagreement, the parents requested a hearing on June 6, 1985. The hearing was delayed at the request of the parents and held on July 17, 19, 23 and 30, 1985.

At the hearing, the parents presented witnesses and testified themselves regarding the distance to the school and regarding the Student's severe constipation problem which they maintained would be aggravated by a long bus ride. Some of the parent's witnesses testified that the ride to the proposed placement could take from a half hour to as long as an hour and a half depending on traffic conditions. The parents themselves testified regarding the long bus ride which would be involved and the fact that they believed it would aggravate the Student's constipation. The parents also presented medical testimony showing the Student's constipation to be an extremely severe problem and showing that the parents were taking extraordinary measures (colonic lavage) to try to correct the constipation problem. The parents' medical witness further testified that a long bus ride could have contributed to the Student's constipation problem.

The Local System presented witnesses who testified the proposed placement would be an approximate fifty minute bus ride, the medical condition would not be aggravated by the bus ride, and the proposed placement was an appropriate placement for the Student. The testimony regarding the time for the bus ride was provided by the special education transportation supervisor for the school system and her testimony was based upon her traveling the proposed bus route. The testimony concerning the medical condition was by a gastroenterologist who

examined the Student and testified that the Student did have a severe constipation problem but that a fifty or sixty minute bus ride would not be detrimental to the Student.

The Regional Hearing Officer found that the burden of proof was on the Local System to establish that there was a reasonable and logical basis for the actual assignment of the Student to the proposed placement, but that, once the Local System demonstrated that its proposed placement is appropriate, the parents had the burden of proving that the proposed placement is not appropriate to the individual Student because of his health problems.

Applying the burden of proof to the Local System to determine whether the proposed placement was appropriate, the Regional Hearing Officer found that the evidence supported the conclusion that the proposed placement was an appropriate placement unless the Student's medical problems mandated that he be placed closer to home. This finding was based mainly upon the testimony of the Special Education Director. She testified that the proposed placement was based upon the fact that it was in a comprehensive high school which offered students a variety of vocational opportunities and that it was centrally located in the county. She further testified that there would be two MOMH high school classes in the same school which would provide the Student a better opportunity for community skills and which would allow the Student to benefit from the expertise of

two teachers instead of just one teacher. The Regional Hearing Officer also considered the fact that the parties agreed that the Student needed placement in a comprehensive high school and the Student's home school is not a comprehensive high school.

After finding that the proposed placement was appropriate, the Regional Hearing Officer considered the evidence presented concerning the Student's constipation problem and found that the bus ride to the proposed placement would not aggravate the Student's medical problems nor adversely affect the Student's learning ability. The Regional Hearing Officer found that the proposed bus ride would take between fifty and sixty minutes each way. The Regional Hearing Officer then found convincing the testimony of the Local System's medical expert that the bus ride would not be detrimental to the Student. The Regional Hearing Officer did not find the parents' expert convincing enough to contradict the Local System's expert because his testimony was that the bus ride could cause such a problem and because he denied his expertise in the area when testifying. The parents' own testimony regarding the effect of the bus ride on the Student was not found to be as convincing as the Local System's medical expert because the Regional Hearing Officer found that the question of aggravating the Student's constipation was essentially a medical question and the parents presented only their opinion rather than any real factual evidence to support their opinion.

After finding that the proposed placement was appropriate and the Student's medical problems did not warrant a change, the Regional Hearing Officer concluded that the current educational placement for the purpose of maintaining the status quo during the pendency of appeal was the same as the proposed placement. This conclusion was based upon decisions which have read the status quo provisions broadly enough to allow changes in site placement if a similar program is provided the Student.

PART III

DISCUSSION

Appellant contends on appeal that the Local System did not carry its burden of proof in establishing that an appropriate placement in the least restrictive environment was offered the Student and that the reasons for the placement of the program in the distant high school were not reasonable or logical. Appellant's position with respect to the issue of the failure to establish an appropriate placement is that the Local System did not show any evidence of any benefit to the Student from the proposed placement. Appellant's position with respect to the issue of whether the placement of the program is reasonable or logical is based upon five arguments, four of which are factual and one of which is based upon 34 CFR §300.552c. The factual contentions are: first, that the high school in which the proposed placement is recommended is not, as was found by the Regional Hearing Officer, centrally located; second, the Local System did not show that the Student had any specific

need for community skills, which was one basis for the location; third, that there was no showing of what, in the I.E.P., required placement in the distant location, and fourth, that there was no showing that the Student would benefit from having the shared experience of two teachers instead of one, which was given by the Special Education Director as another reason for locating the proposed program in the distant high school.

Appellant also contends on appeal that the parents established at the hearing that the bus ride would harm the Student due to his medical condition and that the Regional Hearing Officer erred in finding that the current educational placement for maintaining the status quo was the same as the proposed educational placement.

The Local System contends on appeal that the proposed educational placement is an appropriate placement in the least restrictive environment and that the parents have not shown the bus ride would aggravate the Student's medical condition. The Local System argues that, because there is substantial evidence in the record to support the above contentions, the decision of the Regional Hearing Officer must be sustained.

Appellant's initial contention, that the Local System did not meet its burden of proof in demonstrating the benefit of the placement to the Student, fails to take into account the issue at the hearing. The issue at the hearing was whether the location of the placement was consistent with the requirement that placement be provided in the least restrictive environment

under 300 CFR §121a.551 et seq. The parents did not contest the appropriateness of the program from any other standpoint. They did not contest the provision of the services in a self-contained classroom nor did they contend that the goals and objectives were inappropriate. The parents agreed that the Student needed a placement in a comprehensive high school setting where he would be with high school age students and where vocational services could be provided.

34 CFR §300.552(c) provides that "Unless a handicapped child's individualized education program requires some other arrangement, the child is educated in the school which he or she would attend if not handicapped." This provision is sometimes referred to as the home school provision. It creates a presumption that the home school is the preferred school but it does not mean that the home school is always the least restrictive placement. It specifically states that the I.E.P. may provide otherwise.

34 CFR 300.552(a)(3) provides that the school system shall insure the child's placement is as close as possible to the child's home. Obviously, this requirement does not mean that placement must be the closest setting to the child's home. If it did, then the previously cited regulation would not state that the I.E.P. could provide otherwise. Also, placements such as residential placement or Georgia's psychoeducational centers would not be allowed. As was stated in Todd C. v. DeKalb Cnty. Bd. of Ed., Case No. 1985-2:

The Local Board is not required to offer all services which a handicapped student might need in his home school. This statement should be evident from the accepted practices in education as well as from the regulations under the Education for All Handicapped Children Act. Some handicapping conditions are of such a low incidence rate that provisions for those conditions in every school would be prohibitively expensive. Thus, the regulations expressly recognize that an occasional residential placement may be necessary. It has long been the practice to offer some psychoeducational services only in specialized centers. Every service which may be needed is not going to be available in the Home School. The State Hearing Officer is of the opinion that the Local Board is able to centralize services to reach a reasonable size population in order to provide services. See, Pinkerton v. Moyer, 509 F. Supp. 107 (1981).

The Regional Hearing Officer's finding that the Local System's placement of the program was reasonable and logical was supported by substantial evidence. The testimony showed that the location was centralized in the county. Even though there were sufficient students in the East Cobb area to create a new class, that does not negate the fact that the centralized setting in the county could be considered to be more accessible systemwide. The East Cobb students could move or more students might move into other areas of the county. The testimony further showed that MOMH students benefit from learning community skills and that the location offered would be best because of the fact that students could participate in community skills away from campus and the other MOMH students would still have another MOMH teacher at the same high school. The Local System

also presented evidence that having the experience and training of two teachers instead of just one would be beneficial.

While there was substantial evidence to support the decision of the Regional Hearing Officer with respect to the proposed placement, the Regional Hearing Officer erred in determining that the current placement was the proposed placement for the purpose of keeping the status quo during the pendency of the appeal. The Student spent the 1984-85 school year in a self-contained MOMH class in a middle school and was out of school during the summer of 1985 for the period of the summer break. There is no evidence in the record to show that the program he was in during the 1984-85 school year does not exist. In instances where a program in which a student was placed is non-existent, it is possible to provide a similar program in a new setting during the pendency of an appeal. However, here the Student's I.E.P. for the 1984-85 school year must remain in effect until the appeals process is concluded, unless the parties agree otherwise.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer that the program offered by the Local System is an appropriate placement in the least restrictive environment

is supported by substantial evidence. That portion of the Regional Hearing Officer's decision is, therefore, sustained. However, the decision of the Regional Hearing Officer that the current placement for the purpose of maintaining the status quo during the pendency of appeal is the proposed placement is not supported by substantial evidence nor consistent with the regulations and is, therefore, reversed. Thus, the decision of the Regional Hearing Officer is sustained in part and reversed in part.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER

OCT 04 1985