

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JANIE H.,)
)
 Appellant,) CASE NO. 1985-50
)
 v.)
)
 DEKALB COUNTY SCHOOL SYSTEM,)
) DECISION OF STATE
 Appellee.) HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the mother (hereinafter "Appellant") of Janie H. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Student is educable. Appellant contends on appeal that the decision was made without reference to any definable standards with regard to the meaning of the word "educable", that the State School System and the DeKalb County School System are permitted unbridled and unlimited discretion in assigning handicapped children to facilities without a logical standard to determine whether the children are educable, that the Local System failed to promulgate rules to establish the educability or non-educability of the Student, the decision was contrary to the weight of the evidence, the decision was arbitrary and capricious, and the transfer caused by the decision will work a hardship on the Student.

PART II

FACTUAL BACKGROUND

The Student in this case is a multiple-handicapped fifteen year old female who was injured in a car accident at the age of seven weeks. She has cortical blindness, a severe hearing impairment, and is non-ambulatory. She has an I.Q. of less than 20.

The Student has been served by the DeKalb County Mental Retardation Center (hereinafter "Training Center") operated by the Department of Family and Children Services for the past six years under I.E.P.s prepared by the DeKalb County School System. On May 29, 1985, a new I.E.P. was prepared by the DeKalb County School System (hereinafter "Local System"). This I.E.P. proposed a placement change from the Training Center to the Margaret Harris Center, which is a program operated by the Local System.

The Local System had provided the previous placement in the Training Center under a cooperative arrangement. Under the arrangement, support services, such as an occupational therapist, physical therapist, and a vision impaired teacher, had been provided to the Training Center by the Local System. The Local System has, over the past few years, been bringing all school aged children who were in the Training Center into the Local System's program. Consistent with that general effort, the Local System Staffing Committee recommended that the Student be placed in the Local System for the 1985-86 school year rather than in the Training Center. The parents objected to the change in placement

and requested, by letter dated July 31, 1985, that a due process hearing be held. This letter was received by the Local System on August 5, 1985. A regional hearing was held on September 5, 1985. At the hearing, the parents contended that the Student should remain in the Training Center. It was their position that the Student was uneducable and the Training Center would provide the necessary maintenance program in which she would be kept comfortable. The Regional Hearing Officer granted an extension to the Student's attorney to file a brief until October 2, 1985. The Regional Hearing Officer then issued his decision on November 3, 1985. The Regional Hearing Officer found that the Student was educable and denied the parents' request for a finding to the contrary.

At the hearing, Appellant testified that the Student had not made any progress in the past eight years and the goals in the Student's I.E.P. were not educational goals. Appellant, therefore, maintained that the goals were unrealistic.

The Local System presented employees of the Training Center and their own employees as witnesses. The Local System witnesses testified they had worked with the Student on feeding goals such as holding a spoon, bringing it to her mouth and feeding herself with finger food, and gross motor skills such as sitting, standing and moving around. The I.E.P. prepared for the Student listed the following as long range goals: 1) developing fine motor

skills; 2) developing gross motor skills; 3) improving sensory stimulation skills; and 4) improving vision skills. The I.E.P. listed the following as short term behavioral objectives: 1) push flipper switch to activate toy/music; 2) reach and pick up object and release upon command; 3) walk with adult support and long leg braces; 4) demonstrate protective reactions in sitting; 5) maintain all-fours when placed; 6) hold spoon; 7) scoop food using spoon and scoop dish with physical assistance; 8) drink from cup with physical assistance; 9) show a positive physical response to tactualkinesthetic, olfactory, gustatory and auditory stimulations; 10) follow a given target with eyes and reach for toys, and 11) reach for a noise-making toy or bell which is paired with a light with minimum physical assistance. The Local System witnesses, who had past experience working with the Student, testified generally that the Student had made progress and that anything listed on the I.E.P. was educational.

This appeal was filed on November 26, 1985. By letter dated December 11, 1985, Appellant, through her attorney, requested the opportunity to present additional evidence in the form of testimony from the Student's physician. The State Hearing Officer agreed to delay the decision on appeal in order to consider the

request to present additional evidence. The Local System opposed the motion to present additional evidence and the State Hearing Officer, after giving the Appellant the opportunity to present an argument as to why the additional evidence was necessary, concluded that the additional evidence was not necessary.

PART III

DISCUSSION

Appellant contends on appeal that the State and Local System have failed to establish any definable standards with regard to the meaning of the word "educable", the decision was contrary to the weight of the evidence, arbitrary and capricious and will work a hardship on the Student. The Local Board contends that the law simply does not recognize children as being uneducable, and, even if it did, this Student is educable, and any hardship which might occur would be tempered because the Student would be working with some of the same teachers she was with in the Training Center.

At the hearing, the sole issue addressed by the Regional Hearing Officer was whether the Student was educable. The record indicates a belief on the part of the parents that, if a determination was made that the child was not educable, then the Student would be served in the Services Center. While the State Hearing Officer is aware that the question of responsibility between the Department of Human Resources (hereinafter "DHR") and the Department of Education (hereinafter "DOE") has long

been an issue, the State Hearing Officer is not aware of any regulation which is currently in effect which would state that, if a child is uneducable, the child is the responsibility of DHR. The DOE/DHR Cooperative Agreement, dated August 19, 1985, provides that local systems may place students in DHR service centers pursuant to valid I.E.P.s as part of the continuum of services available to handicapped students.

The legal issue of whether a student may be uneducable under the meaning of the Education for All Handicapped Children Act (hereinafter "Act") need not be addressed in this case. The State Hearing Officer is unaware of any precedent which is binding in this state which has found that a student may not be educable within the meaning of the Act. That issue can be broken into both a factual and a legal issue. Factually, evidence would first need to show that the Student was uneducable. Then, a legal delineation would need to be made as to whether such a set of facts could be recognized under the Act. Because of the State Hearing Officer's determination set forth below with respect to the factual issue, the legal issue need not be addressed.

In addressing the factual question of whether the Student is educable, the law does not define education in such a fashion that one could say as a matter of law a student with certain factual characteristics is uneducable. It is clear that, under the Act, education has not been limited to academic matters. One of the major thrusts of the Act is to assist handicapped

children in becoming self-sufficient to the extent possible. Thus, such traditionally non-academic goals, such as improving gross motor skills, improving fine motor skills, and improving feeding habits, have been incorporated into students I.E.P.s. Additionally, the law does not set limits of ability below which a student is uneducable.

The State Hearing Officer is bound to support the decision of the Regional Hearing Officer if there is substantial evidence in the record to support the Regional Hearing Officer's decision. (State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51.)

The record below provides substantial evidence to support the decision of the Regional Hearing Officer. As was noted in the Local Board's brief, the Local Board "presented as witnesses ... three trained and state certified educators and two professionals trained in working with the handicapped..." who were of the opinion that the services which were to be provided to the Student were educational in nature while the only witness to testify to the contrary was the Student's mother. These Local Board witnesses testified extensively and were clearly qualified to testify as experts in the area of special education. After the hearing, the Student's mother offered additional testimony from a medical doctor who would testify that the Student was uneducable. The State Hearing Officer denied the offer of additional post-hearing evidence because the medical doctor, while an expert in the area

of medicine, is not an expert in the area of education. While the medical doctor could testify in an expert capacity to the physical condition of the Student, that would not have aided the State Hearing Officer in making this decision. Thus, the decision is not contrary to the weight of the evidence and is not arbitrary and capricious.

Appellant's contention that there were no definable standards with regard to the meaning of the word "educable" also does not warrant reversal of the Regional Hearing Officer's decision. As discussed above, even though there may exist some cases where a student is not educable (such a possibility has not yet been shown in this jurisdiction), that is not the case here. The facts showed the Student to be educable and the lack of standards concerning the term "educable" has not been shown to be a fatal defect. Consistent throughout the Act is the legislative intent to treat each student as an individual. Thus, the lack of a general standard which labels some students as uneducable is consistent with the purpose of the Act to consider each individual's needs separately.

Appellant's final contention, that the change in placement will create a hardship on the Student, has also not provided the State Hearing Officer with any grounds for reversal of the Regional Hearing Officer's decision. While a hardship would not be desirable, Appellant has not shown how a hardship would authorize the

State Hearing Officer to reverse the Regional Hearing Officer's decision. If the hardship were to make the new placement inappropriate, then it might provide Appellant an avenue by which she could seek a change in placement but such a showing was not made in this hearing.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion there is substantial evidence to support the Regional Hearing Officer's decision and that there are no legal grounds for reversal of that decision. The decision of the Regional Hearing Officer is, therefore,

SUSTAINED.

This 17th day of February, 1986.



L. O. BUCKLAND
STATE HEARING OFFICER