

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BURKE COUNTY BOARD	)	
OF EDUCATION,	)	
	)	
Appellant,	)	CASE NO. 1985-51
	)	
v.	)	
	)	
THOMAS S.,	)	
	)	DECISION OF STATE
Appellee.	)	HEARING OFFICER

PART I

SUMMARY

This is an appeal by the Burke County Board of Education (hereinafter "Local Board") from a decision of a regional hearing officer that Thomas S. (hereinafter "Student") is being provided an appropriate public education in the least restrictive environment, with the exception that the Student needs individualized psycho-therapy sessions, given by a person with a Ph.D. or M.D., and coordinated through the Department of Human Resources (hereinafter "DHR"). The Local Board contends on appeal that the Regional Hearing Officer incorrectly referred to the Student as behavior disordered, that the service of individualized counseling under the supervision of a Ph.D. was available but the Regional Hearing Officer is not qualified to determine the frequency or duration of the service and the Regional Hearing Officer erred in ordering coordination of the service through DHR.

## PART II

### FACTUAL BACKGROUND

The Student is a seventeen year old male who has received special education services due to a history of behavior problems. The Student was previously enrolled in another Georgia school system (hereinafter "Previous System") in self-contained behavior disordered classes. He remained in the Previous System, with some interruptions, until this school year. During the 1984-85 school year, the Student received services from the Previous System in its psychoeducational center.

In late August, 1985, the Student's mother attempted to enroll the Student into the regular high school program run by the Local Board. Because the Student had previously received special education services, he was refused admittance to the regular high school. The Student's past records were received by Local Board personnel (hereinafter "Staff") on September 5, 1985 and a staffing was held on September 6, 1985. The Student's mother did not appear at the staffing but was represented by the Student's grandmother and aunt. An IEP was drawn up which provided for placement of the Student at the Ogeechee Psychoeducational Services (hereinafter "OPS"). This placement was agreed upon by both the grandmother and the aunt and the Student entered the program at OPS on September 9, 1985. The Student was very uncooperative on September 9,

1985, and on September 10, 1985, he was disruptive to the point where the Staff called the police to have the Student taken home. The parent was notified by letter dated September 10, 1985 that the Student was suspended until the Staff could meet with the parent. The parent met with the school officials and subsequently was notified by letter dated September 20, 1985 that the Student could return to OPS. At that point, the parent disagreed with the placement at OPS and requested a hearing which was timely held on October 30, 1985.

At the hearing, the Student's mother testified that she wanted the Student placed in a less restrictive environment. She stated that the Student had progressed to the point in the Previous System where he was to have been mainstreamed into regular classes and only placed in a self-contained behavior disordered class part of the time.

The Student testified that he wanted to go to the regular high school and a clinical psychologist testified that the Student should be placed in the regular high school setting with resource help and individualized psycho-therapy. The clinical psychologist had never seen the Student, nor had he seen OPS. He had only reviewed documentation from the Student's file.

The various members of the Staff testified generally that the Student needed to be placed in OPS pursuant to the IEP established on September 6, 1985. The Staff members who testified consisted of the special education coordinator, the director

of OPS, the associate school psychologist, the adolescent coordinator, the Student's teacher at OPS and the principal of the high school the Student would normally attend if he were not involved in special education. The Staff members had reviewed the records of the Student and considered their interaction with the Student on September 9 and 10, 1985, in reaching their decision.

The Regional Hearing Officer issued his decision on November 25, 1985. He determined that the Local Board had met the legal requirements of providing the Student an appropriate education in the least restrictive environment at OPS and that the Local Board should provide individualized psycho-therapy sessions through DHR, with a Ph.D. psychologist or M.D. twice per week.

The Local Board filed its appeal by letter received in the State Department of Education on December 6, 1985.

### PART III

#### DISCUSSION

The Local Board appeals the decision of the Regional Hearing Officer, first contending that the decision incorrectly labels the Student "Behavior Disordered" when, in fact, the Student is "Severely Behavior Disordered." The Local Board argues that labeling the Student "Behavior Disordered" instead of "Severely Behavior Disordered" prevents the Student from being eligible for services from OPS because state admission requirements placed on psychoeducational centers require that a

student with a behavior disorder be severe in nature before the student can be served in a psychoeducational center.

While the Regional Hearing Officer's decision is not explicit, it appears that he intended his decision to mean that the Student may be classified as "Severely Behavior Disordered." The Regional Hearing Officer stated that the Student was "Behavior Disordered." However, this statement was made immediately after his statement, and in consideration of his statement, that the general testimony was that the "Student was severe." This indicates the Regional Hearing Officer intended the classification "Behavior Disordered" to be modified by the adjective "severe." Additionally, the Regional Hearing Officer found that placement in OPS was appropriate, which also indicates that the Regional Hearing Officer felt that the Student was severely behavior disordered. For these reasons, the State Hearing Officer is of the opinion that the Regional Hearing Officer intended the Student to be eligible for severely behavior disordered services.

Additionally, the Local Board is mistaken in arguing that classifying the Student severely emotionally disturbed would make him ineligible for special education services. A severe emotional disturbance is a handicapping condition which qualifies the Student for special education and related services provided pursuant to an IEP. Any services needed to provide

the Student with an appropriate education are to be provided. While classifying the Student only behavior disordered as opposed to severely emotionally disturbed might make the Student ineligible for services in the psychoeducational center, it does not make the Student ineligible for special education services. The Student would still be eligible for special education services and related services needed to provide an appropriate education.

The remaining contentions of the Local Board concern the provision of counseling and therapy to the Student. The Local Board contends that the Regional Hearing Officer erred in indicating the Local Board was not providing proper therapy, in setting the frequency, duration and qualifications of personnel regarding the therapy service to be provided, and in ordering the therapy to be coordinated through DHR. The Local Board argues, respectively, that the service was available, that the Regional Hearing Officer was not qualified to determine the frequency and duration of service, and that the service cannot be coordinated through DHR.

The Local Board's argument that the Regional Hearing Officer erred in indicating therapy was not being provided does not require reversal of the Regional Hearing Officer's decision. The IEP provided for the Student did not specify that the Student would receive individualized psychotherapy. The Local Board has taken the position that those services are available

thus, the Regional Hearing Officer's determination in that regard is not supported by substantial evidence. When the Staff adds the therapy to the IEP, it would be appropriate for the frequency and duration of the therapy service to be specified at that point in time. Finally, the requirement by the Regional Hearing Officer that the services be coordinated through DHR was not supported by substantial evidence. The Local Board can provide the service through any available qualified means unless there is evidence to show their service

if needed by the Student. The Regional Hearing Officer made the determination that the service was needed and there was substantial evidence in the record in the form of psychological reports and testimony to support his decision. Thus, the service of individual psycho-therapy should be made a part of the IEP and provided.

The Regional Hearing Officer's determination regarding the qualifications of the individuals providing psycho-therapy services, the frequency or duration of the psycho-therapy services, and the coordination of the services with DHR were not supported by the evidence. There was no contention presented at the hearing that the individuals at OPS were not qualified. Federal Regulations require that personnel meet the standards of the State Department of Education. The State Department of Education regulations require that personnel meet licensing requirements in their professions. STATE DEPARTMENT OF EDUCATION REGULATIONS AND PROCEDURES §100.17(VII)(F)(4)(e). Unless evidence is presented showing the Student needs the help of individuals with higher qualifications than those required by State and Federal Regulations, the Local Board need only meet those requirements. If the service must be provided by a Ph.D. or M.D. under state regulations or licensing requirements, then those requirements must be met. Also, there was no evidence presented regarding the frequency or duration of the individual psycho-therapy service and,

Hearing Officer that the Student be placed in OPS with individualized psycho-therapy services should stand, but that the decision of the Regional Hearing Officer stating the frequency and duration of the service, and that the service should be provided by persons with a Ph.D. or M.D. and coordinated through DHR is reversed.

This 7th day of January, 1986.

*L. O. Buckland*  
\_\_\_\_\_  
L. O. BUCKLAND  
State Hearing Officer