

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**IN RE: PAIGE M. and** )  
 ) **CASE NO. 1986-2**  
**MUSCOGEE COUNTY** )  
**SCHOOL BOARD** )  
 ) **DECISION OF STATE**  
 ) **HEARING OFFICER**

**PART I**

**SUMMARY OF APPEAL**

This is an appeal by the Muscogee County School Board (hereinafter “Local Board”) from a decision of a Regional Hearing Officer that, with respect to Paige M. (hereinafter “Student”), the Local Board failed to comply with the due process timelines and that the program offered to the Student does not meet the standards of the State Educational Agency and is not in compliance with the law. The Local Board contends on appeal that it offered the Student a free, appropriate public education and did not fail to meet the timelines for a due process hearing.

**PART II**

**FACTUAL BACKGROUND**

The Student is a nine-year old female who is multiple handicapped, has cerebral palsy, a visual handicap and is nonverbal and non-ambulatory. She cannot sit alone, feed herself, walk or crawl, and is not toilet trained.

The hearing below resulted from a disagreement between the parents and the Local System regarding the Student’s placement. The Local System contended that the Student should be placed in a community service center, while the parents contended the Student should be placed in the Local System. An additional issue was raised when the Local System did not set up

a hearing immediately upon the request of the parents' attorney because the Local System wanted confirmation by the parents that the attorney was authorized to request the hearing.

The Regional Hearing Officer decided that the Local System violated the timelines by not scheduling a due process hearing within twenty days after receipt of the official notice from the parents' attorney. The Regional Hearing Officer also decided that the Local System failed to provide a free, appropriate public education because: (1) it failed to develop an I.E.P. for the Student prior to October 23, 1985, and (2) the placement is not consistent with the regulations which require the Student to be provided an education which meets the standards of the State education agency since those standards require that teachers be certified and auxiliary personnel be licensed. The Regional Hearing Officer's decision was issued on December 31, 1985.

### **PART III**

#### **DISCUSSION**

The Local Board contends that 34 C.F.R. §300.4 does not require a certified or licensed aide to be provided, and that the Federal Regulations expressly recognize, in 34 C.F.R. §300.12, the use of individuals with comparable qualifications rather than requiring individuals certified or licensed by the State Department of Education. The Local Board is correct that 34 C.F.R. §300.4 does not, by itself, require the use of individuals certified or licensed by the State Department of Education. That regulation requires that the program offered to the student consist of special education and related services which:

- (b) meet the standards of the State educational agency, including the requirement of this part...
- (c) ..., and
- (d) are provided in conformity with an individualized education program which meets the requirements [of the regulations].

Because 34 C.F.R. §300.4(b) requires that the program offered to the student must meet the standards of the State Department of Education, one must look to the State Department of Education to determine whether the program offered by the Local Board meets those standards and is, therefore, in compliance with 34 C.F.R. §300.4(b). It is true, as the Local Board argues, that 34 C.F.R. §300.12 states:

the term “qualified” means that a person has met State educational agency approved or recognized certification, licensing, registration, or other comparable requirements which apply to the area in which he or she is providing special education or related services.

The Local Board argues that 34 C.F.R. §300.12 means that, if the Local Board can demonstrate that the individuals providing special education to the student have comparable qualifications, then they are qualified to provide special education to the student. However, 34 C.F.R. §300.12 is not as flexible as the Local Board argues. 34 C.F.R. §300.12 requires the person to meet State educational agency recognized requirements. The individuals in the service center may have excellent training and experience, but §300.12 requires that, in order for those individuals to be qualified, they must have qualifications approved or recognized by the State Department of Education. §300.12 is consistent with the requirements of 34 C.F.R. §300.4 which requires that the program meet the standards of the state educational agency. Both §300.4 and §300.12 require the State Department of Education to develop prior ascertainable standards which programs must meet and which personnel must meet. Consistent with §300.4, the State Department of Education has developed Standards for Public Schools in Georgia, Standards for Private Schools in Georgia, and regulations which also set standards or requirements for programs and personnel. The Public School Standards require:

21. All professional personnel employed in the system hold valid Georgia certificates.
22. All auxiliary personnel employed in the system hold valid licenses.

The Private School Standards require all professional personnel who instruct or supervise students to hold appropriate Georgia certification or be in the process of acquiring certification. Standards for Private Schools Offering Special Education Programs for Public School Assigned Handicapped Students, July 1, 1982, Standard 8. State Department of Education Regulations and Procedures require that related services be provided by certified or licensed personnel as required by state laws or regulations.

The Local Board has not shown, and the State Hearing Officer is unaware of, any other standards or regulations issued by the State Department of Education. The thrust of the State Department of Education's standards and regulations is that State Department of Education certified or licensed personnel must be used to provide educational services. While the State Department of Education could, under 34 C.F.R. §300.12, broaden their regulations to approve or recognize other comparable requirements, its current standards and regulations have not done so except with respect to the provision of related services, which may be provided by certified or licensed personnel as required by state laws or regulations. Thus, only in the provision of related services may individuals not certified or licensed by the State Department of Education be used.

The requirement that State Department of Education certified or licensed personnel must be used to provide educational services has been previously enunciated in Tomika M. v. Jasper Cnty. Bd. of Ed., Case No. 1985-34, which the Local Board argues was incorrectly decided. In that case, the local board placed a student in a service center, similar to this one, in which the personnel were not certified or licensed by the State Board of Education. The student's I.E.P. in Tomika M. called for the provision of a certified teacher. As a result, the student in Tomika M. would have been provided educational services without a State Department of Education certified teacher or licensed aide. For the reasons discussed above, Tomika M. held that program was inappropriate and, for those same reasons, the holding in Tomika M. still stands.

The Local Board, in effect, argues that there are no applicable standards once a student is placed into a service center. This argument, however, is inconsistent with the federal and state regulations discussed above. The Local Board is responsible for providing the Student with an appropriate education. An appropriate education is one which is provided in conformity with the Student's I.E.P., and which meets the standards of the State educational agency. In order to meet the standards of the State educational agency, some standards must exist. In the instant case, the Local Board has not developed an I.E.P., nor has it demonstrated that it can provide a program which meets the standards of the State Department of Education.

The burden of demonstrating that the Local Board has provided a program which meets the standards of the State Department of Education is on the Local Board. The Local Board is advocating a placement which is in a more restrictive environment than the regular school program. Where a local board proposes placement in a more restrictive environment, the burden is on that local board to show that placement is appropriate. See, Wesley B. V. Murray Cnty. School District, C83-349R (U.S.D.C. N. O. Ga., Rome Div.). The Local Board is in a better position to demonstrate its proposed placement meets the standards of the State Department of Education than the parents. The Local Board is more knowledgeable about the state standards than the parent and it is more knowledgeable about its own program than the parents.

The fact that the Local Board has the burden of proving that its program meets State Department of Education standards does not mean that placement can never be in a service center or that every individual working in a service center has to be a certified teacher or licensed aide. The service center is a facility and not a program. While personnel at a facility may play a part in a program, they also may not be necessary to implement an educational program. The I.E.P. will define the program the student receives. It will include the educational services and the related services necessary to provide an appropriate education to the student. In

order for the program to meet the standards of the State Department of Education, the educational services required by the I.E.P. must be provided by personnel certified or licensed by the State Department of Education and the related services must be provided by certified or licensed personnel as required by state laws or regulations. Placement could be in a service center if the educational services required by the I.E.P. are provided by State Department of Education certified personnel or licensed aides, and the related services are provided by certified or licensed personnel as required by state laws or regulations. The fact that the service center may also provide custodial or maintenance services with non-certified and non-licensed personnel, which services are in addition to the educational services and related services required by the I.E.P., would not violate the requirement that the program offered pursuant to the I.E.P. must meet the standards of the State Department of Education. As with all I.E.P.s, educational decisions must be made by the I.E.P. committee to determine what educational and related services are necessary to provide the student with an appropriate education.

The Student's parents contend that O.C.G.A. §20-2-186, O.C.G.A. §20-2-690, and O.C.G.A. §20-2-283 require certified teachers to be present at all times with the Student, and they have made a motion to enforce the decision of the Regional Hearing Officer. O.C.G.A. §20-2-186, however, concerns the aides' authority of "in loco parentis" and does not require certified teachers to be present at all times. Indeed, it specifically recognizes that teachers may not be with students at all times and may be involved in other educational activities. O.C.G.A. §20-2-690 concerns compulsory school attendance and, while it does require parents who teach their children at home to have a baccalaureate degree, that section is inapplicable to the case at hand. O.C.G.A. §20-2-283 relates to the qualifications of substitute teachers in classrooms and does not require that those substitutes always be present with all students any more than O.C.G.A. §20-2-186. The Student's parents' arguments, therefore, also do not change the requirements set forth in the preceding paragraphs.

Appellant's motion to enforce the Regional Hearing Officer's decision is outside the purview of the State Hearing Officer's authority. Each decision of a regional hearing officer or the State Hearing Officer stands on its own. Enforcement of those decisions is a matter for the State Department of Education or the courts.

The Local Board also contends that it was not in violation of the timeline requirements when it failed to call for a hearing upon request of counsel for the parents because, at that time, the Local Board had no notice from the parents that counsel had been retained. The Regional Hearing Officer determined that the request of the parents' attorney for a hearing was sufficient in light of the fact that the attorney had attended a meeting on behalf of the parents with local system employees and the Local Board's attorney, and had previously written a letter to the Director of Special Education of the Local Board on behalf of the parents. The State Hearing Officer concurs with the Regional Hearing Officer that the letter from counsel was sufficient to request a hearing. Thus, the Local Board was responsible for a violation of the timelines.

#### **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 Local Board failed to demonstrate it offered the Student an appropriate program and that the Local Board was responsible for violating the timelines when it failed to request a hearing upon request of the parents' counsel.

The decision of the Regional Hearing Officer, to the extent it is consistent with this decision, is hereby

**SUSTAINED.**

This 6th day of March, 1986.

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