



members (although apparently adult volunteers assist from time to time). This is the classroom in which the Local Board has proposed placement in the most recent individualized education program ("I.E.P.") and in which the Regional Hearing Officer affirmed placement with modifications to the I.E.P.

The Student is profoundly mentally retarded and suffers from severe orthopedic handicaps. He has been diagnosed as suffering from cerebral palsy and epilepsy. He has no recognizable expressive or receptive language and has an estimated I.Q. of between 4 and 12. He has a loss of sight in one eye, ambulates by crawling or scooting across the floor and is not toilet trained. He has minor seizures from time to time.

The Student's records reflect that the placement in the Service Center was pursuant to an I.E.P. at least during the years 1980, 1981, 1982, and 1983, and that the parents consented to the placement in the Service Center. The signatures of the parents were not dated on the pages following the 1980 and 1981 I.E.P.'s but appear to have been for those years. The I.E.P. 's for 1981, 1982 and 1983 each stated that physical therapy would be provided as a related service. The records reflect that the parents were provided copies of their parental rights during this time period, again with the undated signatures being attributed to the 1980 and 1981 I.E.P.'s. In June of 1984, the Service Center terminated the Student from its program for nonattendance. At that time, the records reflect an I.E.P. was drawn which stated that no schooling was to be provided and hospital homebound was not available. Notes of the I.E.P. meeting stated that the related service of physical therapy was needed but was being provided by the parents. During the time the Student was out of the Service Center there was some confusion on the part of the Local Board as to its responsibility to serve the Student. The Local Board had an evaluation performed on the Student and a new I.E.P. was drawn in December of 1984 which stated the Student would be served in the Service Center with the annual goal being to help him become more mobile and

independent. Under the December I.E.P., the Student was also to be provided the related services of transportation and physical therapy.

In October of 1985, the parents met with school officials regarding the Student's educational status. The parents' rights were explained to them and the school officials and parents agreed to meet again to discuss the services to be provided to the Student. They met again on December 11, 1985, with the parent expressing a desire that the Student remain at the Service Center but that the Student receive related services from the Local Board. The Student's father and school officials met again on January 16, 1986, to draw up a new I.E.P. The I.E.P. drawn up at that meeting called for placement at the Service Center; annual goals of improving motor skills and improving communication skills, and related services of transportation, speech therapy and physical therapy. Also at that meeting, the father was informed that a certified teacher of the mentally handicapped would be provided to the Service Center for an average of one hour per week, the aide at the Service Center would be licensed, and that since a physical therapist was examining the Student that afternoon, the frequency of physical therapy would be based on the physical therapist's recommendation. The Student's father declined to approve the placement, and subsequent negotiations failed to produce an agreement for placement. A hearing was requested by the parents and held on May 20 and May 21, 1986.

The Student and his parents were represented by counsel at the hearing. At the outset of the hearing, the parents requested:

1. Immediate placement in the Local Board's schools based on 34 C.F.R. § 300.513 (b), which requires placement in the public school program if the complaint involves an application for initial admission.

2. Placement in the Local Board's schools in that such placement is necessary in order to provide the Student with an appropriate education.
3. Reimbursement for expenditures made by the parents for physical therapy.
4. Provision of a twelve-month program
5. Provision of related services, including a lift bus for transporting the Student, adaptive physical education, speech therapy, physical therapy and occupational therapy.

At the hearing, the Student's father testified the Local Board did not provide physical therapy as provided for in the I.E.P. so he hired a physical therapist to perform services himself. The Student's father then noted that after the physical therapy the Student was able to crawl better, and was much more alert than he had been in the past. The Student's father also objected to the fact that he was not allowed to vote in the I.E.P. meeting.

The Service Center employees testified that none of the teachers or aides at the Center are certified or licensed by the Department of Education, and they have no physical therapist, occupational therapist or speech therapist. They believe there is some benefit from the Student being around other children, he made progress after having physical therapy, and he is regressing without the physical therapy. According to their testimony, the Student actually responds better to the younger children than to the child who is 7 or 8 years old. It was their position that his placement in the Service Center is inappropriate because of his age, his physical development and the fact they do not have certified teachers, physical therapists, and speech pathologists.

The physical therapist who last worked with the Student at the parents' request testified that "his head and postural control had . . . [improved] markedly and it was reported by the staff on many occasions that he was better able to participate with the environment."

The first physical therapist who testified for the Local Board stated the Student was essentially the same during a 1985 reassessment as he had been in 1984. In 1986, when he reassessed him again, the Student was doing slightly better. His recommendation was to reassess the Student monthly and update the Student's program as needed. It was his opinion the Student has reached his maximum functional ability. His recommendation was that a licensed aide or the parent perform the exercises with the Student pursuant to the direction of a physical therapist.

The Local Board had an additional physical therapist testify who recommended that the Student be seen by a physical therapist to reevaluate his progress every two weeks, and an hour to an hour and a half of staff time be spent working with the Student each day. He did not consider it necessary for a physical therapist to personally provide the physical therapy. In his opinion, the physical therapist role would be limited to oversight, with modification of the program to be carried out by the school personnel.

The Local Board's speech and language pathologist recommended she spend one hour a week with the Student on speech therapy and work with the aides at the Service Center. It was her opinion the aides could easily work with the Student to provide the service.

The Local Board's school psychologist testified that the Service Center is the Least Restrictive Environment for the Student. It was his opinion that the Student did better with pre-schoolers than he would with Students his own age because the pre-school students are mentally closer to the Student's mental age.

Based upon this testimony, the Regional Hearing Officer found that it was undisputed that the Student had benefited from the physical therapy which has been provided in the past,

and concluded the Local Board did not have an appropriate placement in existence within the school system. Placement, therefore, in the Local Board's programs would require the creation of a resource room to service just the Student. The Regional Hearing Officer found that such a placement would not be in the Least Restrictive Environment and that it is doubtful the Student would be able to cope with the multiple and varied stimuli associated with mainstreaming in any type class or lunchroom in the public school. She further found the Student would receive no benefit from such a placement.

The Regional Hearing Officer found it is undisputed the Student benefits from the programs and services established for him at the Service Center. The Student does interact with the preschool children and there is a music program from which the Student benefits. The controlled interaction with others at the Service Center constitutes a much less restrictive environment for the Student than placement in a resource room at the school would provide.

The Regional Hearing Officer's decision required the Local Board to provide: a twelve-month program; a certified special education teacher to work exclusively with the Student at the Service Center for one hour per day; physical therapy services from a licensed physical therapist for one hour per week; speech therapy for one hour per week, and an additional certified or licensed aide to the Service Center to assist in providing the Student with services.

The Regional Hearing Officer denied the parents' request for a lift bus, compensation for past services, and placement in the school system. The decision also did not order physical therapy to be provided to the Student twice a week as the parents desired.

Notification of appeal was filed by the Student's attorney on July 7, 1986, with a brief of the issues argued on appeal being filed July 23, 1986. The Local board responded with its position on July 30, 1986.

## DISCUSSION

The parents contend on appeal that the Regional Hearing Officer's decisions on compliance with the due process requirements, placement, amount of time with a certified teacher, amount of physical therapy, transportation, and reimbursement, are in error and must be set aside. Additionally, the parents contend that the Local Board has failed to comply with the order of the Regional Hearing Officer to begin the ordered services immediately.

The State Hearing Officer is bound to sustain the decision of the Regional Hearing Officer if it is consistent with the law and there is substantial evidence to support that decision. State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51.

The first contention of the parents to be addressed is that the Local Board violated the Student's due process rights by consistently breaching statutory requirements. This contention is based on the allegations that the Local Board failed to provide related services, the Local Board contended they had no responsibility for the Student, the Student was not moved into the public schools under the interagency agreements between the Department of Education and the Department of Human Resources, there was no documentation the parents were invited to the I.E.P. meetings before June of 1983, and the parents were denied the opportunity to participate and vote in the I.E.P. meeting in 1986.

The Regional Hearing Officer did not find any statutory violations which warranted action in the hearing process and, with the exception of the failure to provide physical therapy, the Regional Hearing Officer's finding in that respect is supported in the record by substantial evidence. The contention that the Local Board maintained it had no responsibility for the Student from 1977 to 1986 is unsupported by the facts in the record. The record reflects that the Student was provided I.E.P.s at least in 1977 and from 1980 to 1986. Even though the I.E.P.s, with the

exception of one instance, called for placement in the Service Center, this does not show a denial of responsibility. It does show that the Local Board believed its responsibility could be carried out in that manner, a position with which the parents agreed, until 1986. The fact that the Student was not moved into the public school pursuant to the interagency agreements is not a procedural violation. The I.E.P. controls where the Student is placed. The parents agreed to the placement and, under the agency agreements, the Student could not be terminated without a hearing unless the parents agreed.

The contention that no documentation exists that the parents were invited to meetings prior to 1983 fails to recognize the fact that the record presented by the parents contains undated documents signed by the parents which were in sequence with I.E.P.s for the years 1980 (Exhibit P. 10.15) and 1981 (Exhibit P. 10.12) and a statement dated May 14, 1982 (Exhibit P. 10.10) which acknowledged that the Student's mother was invited to participate in the I.E.P. meeting. The contention that the parents were denied the opportunity to participate and vote in the I.E.P. in 1986 also does not warrant a finding of a statutory violation. The I.E.P. meeting is not a meeting where the school representatives and parents and their representatives line up to vote for their position. It is a meeting to reach a consensus of opinion. In the event a consensus of opinion is not reached, then the hearing process which has been invoked in this case is the appropriate remedy.

The second contention of the parents to be addressed is that the program approved by the Regional Hearing Officer is not sufficient to provide the Student with an appropriate program. They contest the amount of physical therapy proposed, the amount of time the Student will be provided a certified teacher, and the fact that a lift bus will not be provided to the Student. They contend the issue of whether the Student is making progress towards an attainable degree of personal independence was not considered and there is no indication the Regional Hearing



Officer's decision relied on any evidence. Additionally, the parents contend the placement is inappropriate because it is not the Least Restrictive Environment for the Student. They contend that the Student was placed in the Service Center because of his classification as profoundly retarded, but the Local Board failed to argue that the Student would not benefit from mainstreaming, and the school system's regular classroom is presumptively the least restrictive placement.

Contrary to the parent's arguments, there was substantial evidence presented that the program approved by the Regional Hearing Officer was an appropriate program in the Least Restrictive Environment. The content of the I.E.P. with respect to the Student's goals and objectives was essentially unchallenged. The dispute involves the place of services and the issue of Least Restrictive Environment with respect to that placement, the quantity of time to be spent with the physical therapist and a certified teacher, and the fact that a lift bus was not ordered to be provided. Substantial evidence was presented that the I.E.P. could be implemented at the Service Center with certified or licensed personnel. The testimony of the physical therapists and speech therapist was that the goals and objectives could be taught by almost anyone if the therapists provided supervision, instruction and weekly evaluation of the services. Based upon the testimony of those professionals, and the nature of the objectives, there is no reason to believe the I.E.P. cannot be implemented at the Service Center. Also, there was substantial evidence to support the Regional Hearing Officer's decision that the placement at the Service Center was in the Least Restrictive Environment. The Service Center's employees testified the Student actually responds better to the preschool children at the Service Center than the child who is seven or eight years old. The school psychologist testified it was his opinion the proposed placement would be the Least Restrictive Environment, as did the Special Education Coordinator. While those individuals are likely to be biased towards their position since they are school system employees, they are professionals upon whose testimony the Regional Hearing Officer is entitled to rely. Additionally, the testimony showed that a placement in the school system would likely be more restrictive in that the Student would probably need to be placed in a self-contained classroom by himself instead of being able to be around seven or eight other students as the proposed placement provides.

The quantity of physical therapy ordered by the Regional Hearing Officer is supported by substantial evidence in the record and the parents have not shown evidence to support any requirement of additional time with a certified teacher. The testimony of the parents' physical therapist was that she saw the Student once a week on a regular basis and occasionally twice a week. The physical therapists who testified for the school system basically stated that the physical therapist's involvement would be more of a supervisory nature over the program provided the Student. This evidence is sufficient to support the decision of the Regional Hearing Officer, especially since there was no showing the Student needed physical therapy in excess of that amount. The contention that the parents were paying for therapy twice a week was not supported by the testimony of their own therapist.

Also in error is the parents' contention the provision of service by the certified teacher for only one hour per day violates State Board of Education Standards which require the length of the school day to be at least six hours, exclusive of recess and lunch periods, for students in grades four through twelve. Suffice it to say that the Student in this case is not in grades four through twelve and the chronological age of the Student does not entitle him to be placed in grades four through twelve. Thus the standard is inapplicable to the facts of this case.

The Regional Hearing Officer ordered the Local Board to provide safe and comfortable transportation as a related service and the parents object to the Regional Hearing Officer's failure to order the Local Board to provide a lift bus. The parents rely on a Civil Rights, Policy Interpretation, which states that carrying is an unacceptable method for achieving program accessibility except when program accessibility can be achieved only through structural changes, or if in manifestly exceptional cases carriers are formally instructed on the safest and least humiliating means of carrying and the service is provided in a reliable manner.

The citation of the above policy interpretation is not sufficient to prohibit all carrying if it is provided in a reliable manner. No cases or statutes have been cited to support the proposition that carrying is unacceptable. The Student has been carried onto the bus in the past and the Regional Hearing Officer did order that a wheelchair be provided the Student. The Local Board has been ordered to provide transportation in a safe and reliable manner. This should accomplish the requirement that transportation is to be provided to the Student as a related service pursuant to the I.E.P.

The parents also contend they should be entitled to reimbursement for the expenses they incurred in providing physical therapy which was found to be appropriate by the Regional Hearing Officer. This contention is based upon the U.S. Supreme Court decision, Burlington School Committee v. Department of Education U.S., 105 5. Ct. 1996, (1986) and the fact that the parents provided the service which was later determined to be necessary. The Regional Hearing Officer denied reimbursement based upon the opinion that the circumstances were not exceptional enough to warrant an award of compensatory damages and because the parents presented no evidence at the hearing as to the actual sums expended.

The Regional Hearing Officer erred in failing to require the Local Board to reimburse the parents for their expenses in providing the physical therapy. Under Burlington, no showing of exceptional circumstances is necessary in order to be reimbursed for expenditures made by parents when the expenditures are later shown to be warranted as having been necessary in order to provide the student with an appropriate education. In Burlington the Court stated “reimbursement merely requires the Town to belatedly pay expenses that it should have paid all along and would have borne in the first instance had it developed a proper I.E.P.” Under the facts of this case, the Local Board will be reimbursing the parents for services the Local Board should

have provided. Indeed, in this case, unlike in Burlington, the Local Board provided for physical therapy services in the I.E.P.s, but failed to actually provide the service.

The Local Board contends it should not be required to reimburse the parents because the parents failed to prove the amount of damages. This argument fails to recognize that the hearing process is an administrative proceeding which does not require the full formality of court proceedings. Additionally, the special education hearing process is particularly unique in that a case is subject to a de novo review by the federal courts. It does not seem reasonable to require the parents to seek a de novo review in federal court to obtain the reimbursement to which they are entitled. Rather than require a new hearing to determine the amount the Local Board should reimburse the parents, the Local Board should reimburse the parents for those bills which the parents can demonstrate they have paid or caused to be paid as a result of their provision of physical therapy to the Student. If there is a disagreement as to the amount, a new hearing can be requested.

The parents' final argument on appeal is that the Local Board has refused to implement the order of the Regional Hearing Officer to begin the ordered services immediately. The Local Board has requested the decision of the Regional Hearing Officer be upheld and, thus, has not contested interim placement. No facts exist in the record to support the contention that the Local board is not complying with the order of the Regional Hearing Officer. Additionally, if an order of a Regional Hearing Officer or the State Hearing Officer is ignored, then enforcement of that order would be either by the State Board of Education or the courts. Thus, since the order was not contested by the Local Board on appeal, it should be implemented.

## **DECISION**

Based on the foregoing discussion, the record presented and the briefs and arguments of counsel, the State Hearing Officer is of the opinion the decision of the Regional Hearing Officer is supported by substantial evidence and is consistent with law, except with respect to the issue of reimbursement for the provision of the physical therapy by the parents. The decision of the Regional Hearing Officer is, therefore, sustained with respect to all issues except the issue of reimbursement for physical therapy. The decision of the Regional Hearing Officer is reversed with respect to the reimbursement of the parent for physical therapy, and all payments for physical therapy which can be substantiated by the parents should be reimbursed to the parents by the Local Board.

This 11th day of August, 1986.

L. O. BUCKLAND

State Hearing Officer