

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT N.,))	
))	
Appellant,))	CASE NO. SBE 1986-34
))	
))	
v.))	
))	
TAYLOR COUNTY BOARD))	DECISION OF
OF EDUCATION,))	STATE HEARING OFFICER
))	
Appellee.))	

PART I

SUMMARY

This is an appeal by the parents of Robert N. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Taylor County Board of Education (hereinafter "Local Board") had not failed to provide the Student with a Free Appropriate Public Education, and that refused the parents' request that the Local Board pay for the Student's placement in a private hospital. The parents contend on appeal that the Regional Hearing Officer's decision will put the Students welfare and the welfare of others in danger, that the Regional Hearing Officer's decision that the hospital is too restrictive is in error, and that the Local Board has not provided the Student with an Individualized Education Plan (hereinafter "IEP") . The State Hearing Officer recommends the decision of the Regional Hearing Officer be reversed.

PART II

FACTUAL BACKGROUND

The Student is a fifteen-year-old male who is of normal intelligence, but suffers from emotional and behavioral problems. He attended school in the Taylor County School System (hereinafter "Local System") from the first grade through the third grade. He then went to a private school where he did not perform well. Based upon the Student's behavior problems, he was placed in Campeonada, an outdoor therapeutic program, by the parents. The parents requested assistance from the Local Board in paying for the placement in Campeonada and the Local Board agreed to such placement. In May of 1984, the Student was released from Camnponada. In the discharge report from Campeonada, which was received sometime after the Student's return to the Local System, the following recommendations were made:

1. [The Student] should be evaluated to determine if there is any physical causation of his behavioral and/or emotional problems. A neuropsychiatric evaluation with an EEC is suggested.
2. Consideration should be given to possible medication in order to assist [the Student] with control in his less structured environment.
3. A new psychological evaluation is in order to provide an update on his intellectual and emotional functioning.
4. L.D. and B.D. special educational services will need to be provided. A self-contained classroom may be necessary.
5. Parents will need considerable support services in order to help them deal effectively with [the Student].

The Student returned to the Local System for the 1984-1985 school year and was placed in the regular seventh grade program in the Local System. If he passed five of the seven subjects he took and his discipline problems were not excessive.

In the 1985-1986 school year, the Student again entered the Local System and was placed in the eighth grade in college preparatory classes. The Student had various behavior problems in class and was referred to the Local System's Student Support Team on September 6, 1985. The Student Support Team moved the Student to the front of the room in the class in which he was having problems and recommended individual instruction when possible. A follow up meeting was held on September 20, 1986, in which a recommendation for Behavior Disorder services was recommended. In early October, the parents removed the Student from the Local System and placed him in a private hospital.

After the Student had been placed in the private hospital, probably sometime around November, the parents requested financial assistance from the Local System. The Local System met in April to consider the options for placement. The options considered were as follows:

1. Continued placement at the hospital;
2. Regular class placement with private counseling provided by parents;
3. Regular class placement with behavior disorder services with private counseling provided by parents.

The school system rejected options one and two and the parents rejected options two and three. The Local System took the position that the Student's educational needs could be met in the public school by the local school in a regular class setting with behavior disorder services to aid with the transition from the hospital and to help with behavioral characteristics associated with the Student's conduct disorder. An TEP was not prepared for the Student.

The parents requested a hearing and the hearing was held on June 12, 1986.

The Regional Hearing Officer issued a decision on July 5, 1986, and found that the Local Board had not failed to provide the Student with a Free Appropriate Public Education but rather had not been provided the opportunity to do so. The parents appealed the decision of the Regional Hearing Officer by letter received by the State Department of Education on August 4, 1986. No briefs were submitted by either party in support of their positions on appeal.

PART III

DISCUSSION

The parents contend on appeal that the Regional Hearing Officer's decision will put the Student's welfare and the welfare of others in danger, that the Regional Hearing Officer's decision that the hospital is too restrictive is in error, and that the local Board has not provided the Student with an IEP.

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.

In the present case, the Regional Hearing Officer's decision is not consistent with the Education For All Handicapped Children Act, Pub. It No. 94-142 (hereinafter "Act") , and the regulations adopted by the Federal Government and State of Georgia pursuant thereto. The Local Board has offered the Student a special education program, thus acknowledging the fact that the Student is handicapped within the meaning of the Act. However, the Local System has not prepared an IEP for the Student. Under the Regulations, the Local System must provide the Student with a Free Appropriate Public Education which is defined as "special education and

related services which: ... (d) Are provided in conformity with an individualized education program“ 34

C.F.R. S300.4. An TED must contain the following:

1. A statement of the child’s present levels of educational performance;
2. A statement of annual goals, including short-term instructional objectives;
3. A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular educational programs;
4. The projected dates for initiation of services and the anticipated duration of the services; and
5. Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short-term instructional objectives are being achieved.

34 C.F.R. §300.346.

In the present case, the Local Board has not shown that an IEP in conformity with the above requirements has been provided. Based upon the fact that an IEP was not written, the Regional Hearing Officer erred in determining the Local Board had not failed to offer the Student an appropriate education. Until an IEP is written, that issue cannot be determined.

The fact that the Local System has not yet written an IEP does not automatically mean the Local Board must pay for the costs associated with the private placement of the Student. At the present time, it is questionable as to whether the private hospital is an appropriate educational placement and a determination as to whether the Local Board can offer the Student an appropriate program has not been made. After those issues are resolved, the issue of payment for the private placement can be determined based on the equities of the situation under the reasoning of Burlington School Committee v. Department of Education, U.S. ___, 105 5. Ct. 1996 (1986)

The parents' contentions on appeal that the Regional Hearing Officer's decision will put the Student's welfare and the welfare of others in danger, and that the Regional Hearing Officer's decision that the hospital is too restrictive is in error, would not appear to require reversal of the Regional Hearing Officer's decision. The record does contain substantial evidence which would support a regional hearing officer's decision with respect to the Least Restrictive Environment, if the Local System had developed an IEP. Additionally, the evidence shows the Student attended school in the Local System without experiencing any dangerous situations. However, because an TEP must be developed, the Local System should consider these issues and either accept or reject requests regarding them in developing the program for the Student.

PART IV

DECISION

Based on the foregoing discussion, the record presented and the appeal of the parents, the State Hearing Officer is of the opinion the Local Board must develop an IEP for the Student. However, this decision does not mean the Local Board must necessarily pay for the private placement of the Student, either retroactively or prospectively. The decision of the Regional Hearing Officer is

REVERSED.

This 5th day of September, 1986.

L.O. BUCKLAND
State Hearing Officer