

meeting. A consensus was reached regarding the TEP goals and objectives, but Appellant and the Local Board representatives did not agree on the sites of the placement. The Local Board representatives recommended placement at the Butler Center, a public, self-contained facility which serves only handicapped children. Appellant contended the Butler Center was not the least restrictive environment, and that the Student should be placed in a program at Tinsley Elementary School (hereinafter "SMR/Tinsley"), where non-handicapped children also attended school. When an agreement could not be reached, Appellant requested a hearing. The hearing was held on September 22, 1986, and the Regional Hearing Officer issued a decision on October 16, 1986.

The school psychologist, who evaluated the Student for the Local System, testified at the hearing that the Student was totally dependent on others, needed a very structured environment, and had more severe needs than the other students at SNR/Tinsley. Additionally, the school psychologist did not see the value of the Student being present with non-handicapped students in assembly, the lunchroom, or the media center. Although he testified that the TEP goals could probably be met at either Butler or Smith/Tinsley, the psychologist stated that the better placement was at Butler, and that all the children at SMR/Tinsley were functioning above the Student. It was the school psychologist's opinion that the Student would be a passive participant at SMR/Tinsley but an active participant at Butler, and that interaction with the teachers at Butler would be more meaningful than observation of the non-handicapped students at SMR/Tinsley.

Similarly, the director of the program for exceptional children testified that the TEP goals and objectives could probably be implemented anywhere, and on any campus, and that the Student would not benefit from participating in assemblies, lunch, the library, or a music program in a regular school such as SMR/Tinsley. The director further testified that at Butler the Student would be in a class with children who were ambulatory.

The Local Board's speech and language pathologist testified that the Student had no pre-speech skills, was not in need of speech therapy, and would not benefit in any greater degree from the exposure to the children at SMP/Tinsley than from the exposure to students at Butler.

The Executive Director of the Cerebral Palsy Center testified that she felt the Student could be served in a less restrictive environment than the Butler Center, that the Student showed interest in normal children's activities at a summer camp the Student attended, and that no child should attend the Butler Center. Appellant testified that the Student smiled and laughed when she was at summer camp watching non-handicapped children play, and she felt the Student should be at SMR/Tinsley.

The Regional Hearing Officer found that the Local Board's proposed placement at Butler Center was no more restrictive than SMR/Tinsley, and, even if it were deemed to be more restrictive, the Butler Center *was* the least restrictive environment because the highly speculative advantages of the slightly less restrictive environment at SMR/Tinsley were heavily outweighed by the significantly greater capacity of the Butler Center program to meet the Student's primary goals for education and self-care.

PART III

DISCUSSION

Appellant's first contention is that the IEP was based upon an inadequate and incomplete evaluation because it contains a recommendation to refer the Student for occupational and physical therapy evaluations. Appellant contends that the IEP is in violation of 34 C.F.R. § 300.531 and Georgia Department of Education Regulation

IDDFd3-7, which require that a full and individual evaluation be completed before the placement decision is made. Appellant's first contention, however, was not raised in the hearing before the Regional Hearing Officer. Issues not raised in a lower court may not be raised for the first time on appeal. Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Ed. of Ed., 245 Ga. 647 (1980); Boney v. Cnty. Bd. of Ed., 203 Ga. 152 (1947) . The only issue raised at the hearing was whether the site offered by the Local Board was the least restrictive. No objections were raised that the TEP was in any other way defective. The need to perform occupational and physical therapy evaluations was an agreed upon goal. Additionally, the need for further evaluations in order to determine specific program routines does not establish that the evaluation of the Student was deficient. The State Hearing Officer, therefore, concludes that, under these circumstances, Appellant may not raise this new issue on appeal.

Appellant's second contention is that the Regional Hearing Officer's decision does not place the Student in the least restrictive environment, in accordance with 20 U.S.C. §1412 (5), 34 C.F.R. §300.550, and Georgia Department of Education regulations IDDFd3-6. One of the purposes of the Education for All Handicapped Children Act of 1975 was to prevent segregation of handicapped children and the least restrictive environment requirement was included. Georgia Department of Education regulation TDDFd3-6 provides, in part:

To the maximum extent appropriate exceptional children in Georgia shall be educated with children who are not handicapped. . . . [except] when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. ... [and] unless clear evidence is available that partial or full removal is desirable for the welfare of the child or other children.

when an exceptional child must be assigned to a special program, educational goals shall be specified; and when these goals are met, the child shall be returned

to the most normal setting possible consistent with the child's capabilities and educational needs.

The regulation thus requires handicapped children to be educated with non-handicapped children "to the maximum extent appropriate" unless the student's handicap is so severe that an education cannot be satisfactorily achieved in a non-handicapped setting. Also, a student's handicap may indicate that it is desirable not to educate the student with non-handicapped students.

Appellant maintains that the Butler Center program is more restrictive than the SMR/Tinsley program. This contention is based upon the fact that the SMR/Tinsley program would offer the Student an opportunity to observe non-handicapped children during lunch, assemblies, and in the library. The Regional Hearing Officer, however, found that the speculative benefit to the Student of passively observing non-handicapped students was outweighed by the benefits to be obtained from the Butler Center program where the Student would actively participate with the teachers. The Regional Hearing Officer's decision is consistent with the evidence presented. It is also consistent with the regulations. The Regional Hearing Officer, in effect, determined that the Student's handicap was so severe that an education could not be satisfactorily achieved by passive observation of non-handicapped students.

The least restrictive environment requirement does not mean that handicapped students have to be placed with non-handicapped students simply because the handicapped student can survive in the environment. Contact with non-handicapped students is not the sole determining factor in deciding where a student should be placed. The determination of what is the least restrictive environment also has to take into consideration the student's handicap, ability, needs, and the educational benefits to be derived. In the instant case, the Regional Hearing Officer determined that the Student would receive educational benefits

in the Butler School program, but the SMR/Tinsley educational benefits were speculative. If there is substantial evidence to support the decision of the Regional Hearing Officer, the decision will not be reversed on appeal. State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51. Here, the Regional Hearing Officer received testimony regarding the educational benefits the Student would receive in the Butler School program. The evidence of the benefits to be obtained by attendance at SMR/Tinsley was that the Student exhibited a positive response while at a summer camp program. This evidence is insufficient to establish that the Regional Hearing Officer's finding was erroneous. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer's decision, that the program offered by the Local Board would provide the Student with a free, appropriate, public education in the least restrictive environment, was supported by substantial evidence.

PART IV

DECISION

Based on the foregoing discussion, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer was supported by substantial evidence, and was consistent with the law and regulations. The decision of the Regional Hearing Officer is, therefore,

SUSTAINED.

This 17th day of December, 1986.

L. O. BUCKLAND
State Hearing Officer