

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: KAREN W.

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CASE NO. 1980-1

O R D E R

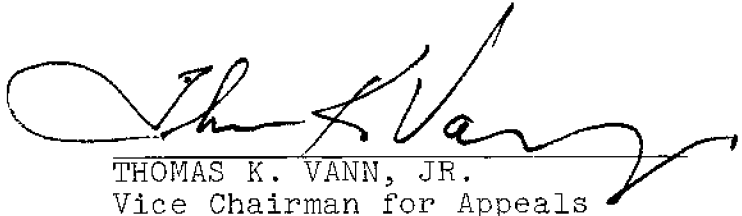
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the DeKalb County Board of Education herein appealed from is hereby affirmed.

Mrs. Oberdorfer, Mrs. Huseman, Messrs. Foster and McClung were not present.

This 13th day of March, 1980.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

IN RE: KAREN W. : CASE NO. 1980-1  
: :  
: : REPORT OF  
: : HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision by the DeKalb County Board of Education (hereinafter "Local Board") regarding the decision of a regional hearing officer in connection with the payment of special education services for Karen W. (hereinafter "the Student"). The Local Board accepted the findings and conclusions of the regional hearing officer except for those parts from which an inference might be drawn that the local school system had to pay for more than 270 days of education services. The Student's parents appealed from both the decision of the Local Board and the decision of the regional hearing officer on the grounds that the Local Board could not accept a portion of the regional hearing officer's decision and reject other portions, they were unable to participate in the deliberations of the Local Board, and the local school system should be required to pay the transportation costs and costs of related services. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II  
FINDINGS OF FACT

The Student, who was identified as a seriously emotionally disturbed child, was enrolled in special education facilities and in the Georgia Mental Health Institute until January, 1979. In August, 1978, a recommendation had been made that the Student should be enrolled in a residential program. With the assistance of the local school system, the Student was enrolled in The Brown Schools, a psychiatric treatment facility located in San Marcos, Texas. The local school system paid for the Student's attendance until June, 1979. Funding for the Student's attendance during the summer months of 1979 was provided by the Georgia Department of Human Resources.

On July 2, 1979, the individualized education program ("IEP") prepared by the private school was reviewed by the Student's parents and a representative of the local school system. The parents consented to the Student's placement on July 2, 1979. At some later time, which is not evident from the record, the parents objected to the fact that the local school system would only pay for 270 days of educational services for the Student. The parents contended that the 270 day limitation on funding resulted in a change of the Student's placement because the IEP prepared on July 2, 1979 provided that the duration of services would be for 18-24 months. A hearing on the matter was conducted before a

regional hearing officer on December 14-15, 1979. The regional hearing officer issued his decision on December 31, 1979.

The Student's parents were represented by an advocate at the hearing before the regional hearing officer. During the course of the hearing, the Student's parents raised two additional issues: (1) the local school system had not reimbursed them for transportation costs; and (2) the local school system had not reimbursed them for diagnostic and evaluation tests. Additionally, the parents pointed out that funds had not been provided for speech therapy. The local school system, through counsel, agreed that the school system would pay the costs of round trip transportation for the Student and the cost of evaluation and diagnostic tests. The local school system, however, did not agree to pay the transportation costs of a companion to accompany the Student to the residential facility. It was also pointed out that the Student's parents had not made any application for reimbursement of the expenses of evaluation and diagnostic tests.

The regional hearing officer concluded that the Student was severely emotionally disturbed. The regional hearing officer also concluded that the issues concerning the costs of transportation and evaluation and diagnostic tests could be worked out between the school system and the parents. The costs of speech therapy was not addressed because the regional hearing officer concluded that speech therapy had not been recommended by the private school and might not be

recommended until the Student became more stabilized.

With respect to the 270 day funding issue, there is an inference that the regional hearing officer concluded that the local school system could not pay for more than 270 days of educational services. He did conclude that there was a discrepancy between the funding policies for psychological education centers and the policy on grants for educational services which the local school system should raise with the State Department of Education in an attempt to rectify the situation.

The regional hearing officer finally concluded that the Student's handicaps were not educational in nature and could be better handled by the State Mental Health Agency under the Department of Human Resources. The regional hearing officer then recommended that:

- (1) The school system take appropriate steps to fund evaluation and diagnostic costs;

- (2) The school system take appropriate steps to settle the transportation costs issue;

- (3) The school system take appropriate steps to have an annual review of the IEP in March or April, 1980, and

- (4) The school system should enlist the aid of the State Mental Health Facility in obtaining funds for the Student's summer program "if summer attendance at the private school is required".

The Local Board rejected the regional hearing officer's conclusion that there was an inconsistency between

the policy on grants and the policy concerning psychological education centers and any conclusions or recommendations that suggested that the Local Board should be held responsible for funding of an educational program for the Student in excess of 9 months. The Local Board did agree to conduct an annual review of the Student's IEP in March or April of 1980 and to attempt to locate sources of funding for a summer program for the Student. The Local Board also decided to instruct its staff to investigate the issues of transportation and evaluation and diagnostic costs to determine to what extent they should be borne by the school system.

### PART III

#### CONCLUSIONS OF LAW

The principle issue to be decided in this case is whether the Local Board properly limited its payment for educational services to 270 days. The Student's parents have also raised the subsidiary issues of whether the Local Board should pay for the expenses of transportation and evaluation and diagnostic testing, and whether they should have been permitted to participate in the deliberations of the Local Board. With respect to these issues, however, there was no evidence in the record to indicate that the Student's parents ever made application for reimbursement of the expenses of transportation, and evaluation and diagnostic testing. Additionally, there was no evidence that the parents have made

payment for such expenses. The Local Board has also agreed to pay such expenses as may be required by law. In the absence of any evidence that payment has been made and the school system has refused to reimburse such expenses, the Hearing Officer concludes that a real controversy does not exist. The regional hearing officer, therefore, properly did not definitively decide or recommend that the local school system should pay such expenses. The Local Board also properly reserved a decision on the payment of such expenses.

The Local Board was acting in a judiciary capacity when it deliberated on its decision. There is no requirement of law that any of the parties should be permitted to be in attendance when a local board of education is making a decision in a judicial capacity. The Hearing Officer concludes that the Local Board properly reached its decision without the Student's parents being in attendance.

With respect to the principle issue, the Local Board properly decided that it would not pay for more than 270 days of educational benefits. This issue was decided by the State Board of Education in the case of In Re: J.E.B.G., Case No. 1979-5, where it was decided that a local board of education is not required to pay for more than 180 school days of educational benefits.<sup>1</sup> The regional hearing officer was not explicit in his decision concerning the 270 day

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<sup>1</sup>This limitation was changed to 270 days in cases of residential treatment by the State Department of Education according to testimony presented at the hearing.

limitation, but the Hearing Officer concludes that his discussion of the limitation was a tacit recognition of the limitations placed on a local board of education by the state law and decisions of the State Board of Education. The Hearing Officer, therefore, concludes that the Local Board properly rejected any inferences that the school system was responsible for more than 270 days of educational benefits, and that such a rejection did not constitute an overruling of part of the regional hearing officer's recommendations while accepting the remaining parts. The parents' initial contention that the Local Board's power was limited to accepting or rejecting the decision of the regional hearing officer, therefore, is not an issue in this case.


#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions and the record submitted, the Hearing Officer is of the opinion that the local school system is not required to pay for more than 270 days of educational benefits. Additionally, the Hearing Officer is of the opinion that the Local Board properly limited its decision regarding the payment of transportation costs, and the expenses of diagnostic and evaluation tests until such time as requests for payment are



made. The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education be upheld.

  
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L. O. BUCKLAND  
Hearing Officer