

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: GARY C.

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CASE NO. 1980-2

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 Cobb 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

MAR 12 1980

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: GARY C. : CASE NO. 1980-2
: :
: : REPORT OF
: : HEARING OFFICER

PART I
SUMMARY OF APPEAL

This is an automatic appeal following a decision by the Cobb County Board of Education (hereinafter "Local Board") to reject the recommendation of a regional hearing officer that residential placement was appropriate for Gary C. (hereinafter "the Student"). The Local Board rejected the regional hearing officer's decision on the grounds that it was contrary to law and to the evidence presented during the hearing. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II
FINDINGS OF FACT

The seventeen year old Student attended the regular public schools in the school system until the spring quarter of his eleventh grade without any incidents. During the spring quarter, he quit school over the objections of his parents and went to live with his girlfriend. Prior to his

quitting school, the Student maintained grades in the public school system that were commensurate with his ability. In June, 1979, the Student's parents discovered some dynamite in his automobile that he had secured from the construction company where he was employed. The Student was immediately hospitalized in a psychiatric ward of a local hospital where he remained for approximately one month. The Student later took an overdose of valium pills and was again admitted to the psychiatric ward of the local hospital.

The Student's parents contacted the school system regarding an evaluation of the Student. The Student's parents also began the process of locating a private residential school for the Student based upon the recommendations of their insurance company and the staff of the hospital. An initial conference for the development of an individualized education plan ("IEP") was held on September 24, 1979. It was decided that additional educational testing was necessary before the IEP could be completed. Part of the testing was accomplished on September 26, 1979, but the Student transferred to a private residential center located in Texas the following day and the school system was unable to complete its testing. The local school system had, however, proposed during the initial conference that the Student be placed in a severely emotionally disurbed program within the public school system. This recommendation was based upon the reports received from the psychiatric ward of a local hospital and the Student's past record within the public school system. The parents

rejected the proposed placement in the SED program of the public school system and requested a due process hearing. The hearing before the regional hearing officer was held on November 21, 1979 and January 15, 1980. The regional hearing officer gave his report on February 1, 1980 and recommended that the school system pay for the educational services provided by the private residential facility. His recommendation was made based upon his determination that the Student was either emotionally disturbed or had a behavior disorder and upon the further determination that the local school system, while it could provide for educational services could not provide the support services required in order to permit the Student to learn. The Local Board rejected the Hearing Officer's recommendations because:

(1) The private residential program was not the least restrictive environment;

(2) The local school system did not have an opportunity to consider other residential placement;

(3) There was no finding that the local school system could not provide an adequate educational program;

(4) The parents arbitrarily selected the residential school without any input from the local school system;

(5) The recommendation was contrary to the law, the evidence produced at the hearing, and was not supported by the weight of the evidence.

PART III
CONCLUSIONS OF LAW

As set forth above, the Local Board disagreed with the regional hearing officer's decision because it was contrary to the evidence and contrary to law. The Student's parents, however, point out that the State Board of Education is required to follow the "any evidence" rule during its review process, and that there was evidence before the regional hearing officer which would support his decision. The Hearing Officer, however, concludes that, based on the findings and the record submitted, the recommendation made by the regional hearing officer was erroneous.

The regional hearing officer specifically found that the local school system could provide the Student with the necessary educational services. The record submitted supports this finding. The Student was able to maintain grades and progress within the regular high school setting according to his abilities. There was no evidence presented that the educational program to be provided by the local school system was inadequate. The regional hearing officer decided that the placement within the local school system was inappropriate because it did not provide for residential care. The only reason for the residential care, however, was because the Student needed to be removed from the home environment in order to treat his psychiatric problems, not because the removal was necessary in order for him to learn.

There was no evidence that he could not and did not learn in the public school system until he withdrew from school.

The local school system is required to provide handicapped children with a "free, appropriate public education". 45 C.F.R. §121a.300. Included within the definition of handicapped children are children who are seriously emotionally disturbed. Seriously emotionally disturbed is defined as:

"a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance" (emphasis added). 45 C.F.R. §121a.5.

As indicated, if the Student was seriously emotionally disturbed "over a long period of time" it did not adversely affect his educational performance because he was able to perform according to his ability. If his emotional disturbance was transitory, then he did not fit within the definition of a seriously emotionally disturbed child, but the local school system, nevertheless, was able to propose an educational program that was free and appropriate. The local school system is required to provide for a residential program only if it is necessary in order to provide special education and related services to a handicapped child. 45 C.F.R. 121a.302. The federal regulations do not impose any requirement on the local school system to provide residential treatment simply to provide additional services that are unrelated to the Student's ability to learn. The Hearing Officer, therefore,

concludes that the recommendation made by the regional hearing officer was contrary to the findings he made in the case.

Since the regional hearing officer limited the liability of the local school system to educational expenses, an argument can be raised that the school system would not be required to pay for any more than it normally would be required to pay. This argument, however, overlooks the fact that the Student's parents voluntarily placed the Student in the out-of-state school without any input from the local school system and without the advance preparation of an IEP which indicated placement in the particular school was necessary. The federal regulations do not appear to impose any requirements on local school systems to pay even the educational expenses of a handicapped student when the parents have voluntarily enrolled the student in a private facility. 45 C.F.R. §121a.403 specifically provides that if the parents place a child in a private facility "the public agency is not required ... to pay for the child's education at the private school or facility."

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the Hearing Officer is of the opinion that the Student does not meet the definitional requirements for a handicapped student, the Student was able to receive an appropriate public

education within the public school system and the regional hearing officer erroneously recommended that the Student be placed in a residential facility. The Hearing Officer, therefore, recommends that the decision of the Cobb County Board of Education be upheld.



L. O. BUCKLAND
Hearing Officer