

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: AMY C.

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CASE NO. 1980-4

O R D E R

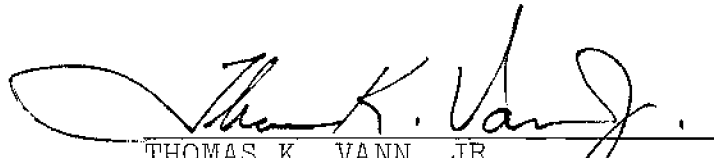
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Bibb 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

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IN RE: AMY C.	:	CASE NO. 1980-4
	:	
	:	REPORT OF
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from the decision by the Bibb County Board of Education (hereinafter "Local Board") affirming the decision of a regional hearing officer in connection with the special education placement of Amy C. (hereinafter "the Student"). The appeal was made on the grounds that the need for residential placement was erroneously limited to a nine month period, and the local school system was erroneously held responsible only for the 1979-80 school year. The Student's parents have since dropped the claim that the residential treatment was erroneously limited to nine months leaving as the only issue the question of whether the local school system is liable for the residential treatment during the period January, 1979 through May, 1979. The hearing officer recommends that the decision of the Local Board be affirmed.

PART II  
FINDINGS OF FACT

In June, 1978, the Student was placed in a resource learning disabilities program in the public school system. The Student's parents accepted the placement and signed the necessary forms. After school started in the fall of 1978, the parents requested that the Student be placed in a twenty-four hour, twelve-month residential treatment center for children with emotional problems. The placement committee for the local school system and the parents met on October 20, 1978 to review the parents request. The placement committee requested further evaluation of the Student, but the Student's doctors refused to permit such evaluation. The committee met again on December 19, 1978 and recommended that the Student's placement not be changed. On January 10, 1979, the parents voluntarily enrolled the Student in a private residential facility located in the state of Connecticut. A mediation meeting between the parents and the local school system was conducted on January 25, 1979 and it was agreed that further action on the placement committee's recommendation would not be taken until such time as various evaluations were obtained from the facility the Student was attending. The reports were not delivered to the local school system until the fall, 1979. Another placement committee meeting was held on October 17, 1979 at which time it was again recommended that the Student be placed in the learning dis-

abilities program in the local school system. The parents did not accept this recommendation and requested a due process hearing. A hearing was held before the regional hearing officer on December 2, 1979.

The hearing officer found that the Student was suffering from a learning disability and was emotionally disturbed. The regional hearing officer, therefore, concluded that the individualized education program ("IEP") proposed by the local school system was not appropriate because the Student required a highly structured environment with consistent twenty-four hour supervision. The regional hearing officer limited his conclusion to the 1979-80 school year because the parents had voluntarily withdrawn the Student from the public school system during the 1978-79 school year, and the issue of the Student's placement during the 1978-79 school year was not raised at the hearing.

### PART III

#### CONCLUSIONS OF LAW

As noted by the regional hearing officer, and as pointed out in the briefs of counsel, the issue of when the local school system was responsible for the payment of residential treatment was not explored or raised during the hearing. The parents argued that there was no question about what period was covered because they initially did not go along with the recommendation of the placement committee that

was made on December 19, 1978. There could not, therefore, be any question that the placement during the 1978-79 school year was also in question. The parents argued that the regional hearing officer simply overlooked the period of time involved or made an error in writing his report. The Hearing Officer, however, concludes that the regional hearing officer did not make an error in limiting his decision to the 1979-80 school year.

An IEP was prepared in June, 1978, and was accepted by the parents. After the Student began participating in the learning disabilities program, the parents requested another evaluation of the Student. This evaluation and a final determination by the regional hearing officer did not come to fruition until the regional hearing officer issued his decision on December 31, 1979. 45 C.F.R. §121A.513 provides:

"during the pendency of any administrative or judicial proceeding regarding a complaint, unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement." (emphasis added).

Notwithstanding the requirement that the child's placement must not be changed unless there is an agreement between the school system and the parents of the child, the parents voluntarily withdrew the Student from the public school system and placed the Student in a private facility in January, 1979. 45 C.F.R. §121A.403 provides:

"if the handicapped child has available a free appropriate public education and the