

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JOSEPH K.

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CASE NO. 1980-22

O R D E R

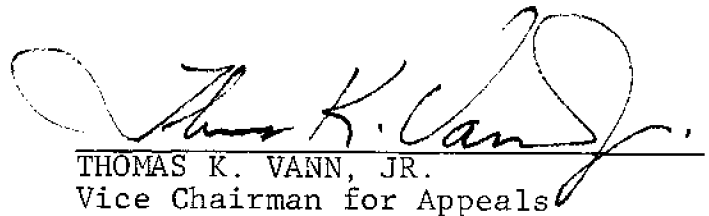
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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.

Mr. McClung and Mr. Smith were not present.

This 14th day of August, 1980.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

406 11 1980

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JOSEPH M. ^K	:	CASE NO. 1980-22
	:	
	:	REPORT OF
	:	
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an automatic appeal following a decision by the DeKalb County Board of Education (hereinafter "Local Board") rejecting the decision and recommendation of a regional hearing officer in connection with the placement of Joseph ~~M.~~^K (hereinafter the "Student") in a private residential school based upon the regional hearing officer's determination that the DeKalb County School System (hereinafter the "Local System") could not provide an appropriate educational program for the Student. The Local Board rejected the findings of the regional hearing officer on the grounds that the evidence produced at the due process hearing established that the Local System could provide for the educational needs for the Student, there was no evidence to indicate that the proposed placement of the Student was inappropriate, and residential treatment was recommended by the Student's psychiatrists and psychologists solely because

of the need to remove the Student from a home environment where the necessary structure was not being provided. The Hearing Officer recommends that the decision of the Local Board rejecting the recommendation of the regional hearing officer be sustained.

PART II
FINDINGS OF FACT

The Student, who is 16 years old, in the eighth grade, and possessed of above-average intelligence, was in a private residential facility at the time of the hearing. He had been placed in the facility by his parents the previous year after a series of juvenile incidents which culminated in his threatening his father with a knife and being charged with criminal trespass in connection with some thefts. The Student's father requested placement of the Student in the Local System for the 1980-81 school term and a staffing committee meeting was held on April 14, 1980 with the Student's parents present. At the meeting, the Local System recommended that the Student be placed in the interrelated severe learning disabilities-behavioral disorder program (hereinafter the "Interrelated Program"). The school personnel present at the meeting provided the Student's parents with a brief outline of the Interrelated Program, but they did not go into any detail, nor did they

present the parents with a completed individualized educational program ("IEP"). The purpose of the staffing meeting was to prepare the IEP, but the Student's parents rejected placement within the Interrelated Program and a hearing on the matter was requested. The hearing was held before a regional hearing officer in two parts on June 6, 1980 and June 30, 1980.

On July 10, 1980, the regional hearing officer issued her report. The regional hearing officer found that the Local System had not provided the parents with a written description of the educational components or curriculum opportunities available, or a statement of the reasons for the proposed placement or a basis for the placement. Additionally, she found that the Local System had not previously provided the Student with a free, appropriate education with the necessary support services (this finding related to the services provided by the Local System prior to the Student being placed in the private residential facility). The regional hearing officer also found that the record indicated a lack of consensus on the part of the professionals regarding the Student's area of exceptionality, his learning handicap and his strengths. She found that the Interrelated Program, or a similarly structured program, would have been appropriate for the Student during the 1978-1979 school year. The regional hearing officer then observed that the witnesses for the Local System testified that they

felt the Interrelated Program would be an appropriate program for the Student. The hearing officer then found that the counselor "with a case load of 50 individual students covering 24 schools could not possibly provide the related service needed to support this Student in the public school program." Based upon these findings, the regional hearing officer found that the Local System did not have an appropriate educational program to meet the educational needs of the Student. She recommended that the Local System work cooperatively with the parents and the personnel from the private residential facility in planning an individualized educational program for the Student which would enable him to return to the public school program by June, 1981.

On July 23, 1980, the Local Board reviewed the record and the regional hearing officer's recommendation and concluded that "the Interrelated SLD-BD Program...can provide an appropriate educational placement for [the Student] in the least restrictive environment." The Local Board then rejected the recommendation of the regional hearing officer.

A review of the record submitted discloses that the Student was identified as having some problems as early as the fifth grade. At that time he was placed in a learning disabilities class, but there was some question about whether he was suffering from a learning disability or from a behavioral disorder. During this time, nevertheless, the

Student was exhibiting grade-level ability even though he had the potential for a higher level of achievement. Following one year in the learning disability class, the Student was transferred to a regular classroom with resource facilities. When he entered the high school (eighth grade) program, he was assigned to a resource teacher but did not report for the resource instruction. The Student was frequently truant and finally dropped out of school altogether during the spring quarter of his eighth grade year. During this period of time, the record indicates that the Student was involved with illicit drugs, alcohol, shoplifting, and other thefts. At the time, the Student was living with his father following his parents divorce in 1977, which in turn was pre-dated by the Student's mother's nervous breakdown in 1975. The psychiatric reports on the Student indicate that the father did not provide any structure within the home environment.

The Student's father learned of the private residential facility from the Student's probation officer. The Student was tested at the facility and the facility's psychiatrist recommended that the Student be placed in the facility because he required residential treatment in order to remove him from the home environment. He was diagnosed as having unsocialized aggressive reaction to adolescence and anxiety neurosis.

The evidence presented at the hearing did establish that the Student was handicapped within the meaning of Public Law 94-142. He suffered from behavior disorders and a learning disability. There was some question whether the learning disability resulted from the behavior disorders or whether the behavior disorders resulted from the learning disability. It was established without objection that the educational components of the Interrelated Program were the same as those provided in the private residential facility. The private residential facility, however, also provided therapeutic services which were not available in the Interrelated Program provided by the Local System. There was, however, group and family counselling available through the Interrelated Program. The Interrelated Program had two teachers and a paraprofessional for 14 students. In addition, the Interrelated Program had available the following support services:

4 psychologists available for family counselling; a school counselor 1 or 2 days a week, a vision and hearing impaired teacher; speech and language pathology; psychometrists for testing; two counselors for planning; physical and occupational therapists; recreational therapist; a reading specialist; a learning disability resource program; a vocational rehabilitation counselor; a special education physical education teacher, and the DeKalb mental health facilities for therapy.

It was also established that the Student's problems were

not dissimilar to those of the other students in the Interrelated Program.

There was no evidence presented by the parents that the Interrelated Program did not meet the educational needs of the Student or that it differed from the educational program of the private residential facility.

PART III

CONCLUSIONS OF LAW

A local school system is required to provide handicapped children with a "free, appropriate public education". 45C.F.R. §121(a).300. A local 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. 45C.F.R. §121(a).302. In the instant case, the regional hearing officer concluded that the Local System could not provide an appropriate educational program for the Student, but the regional hearing officer did not lay any foundation for the conclusion nor did she point to any evidence which established that the program proposed by the Local System was not appropriate. The thrust of the regional hearing officer's findings was that the Local System did not provide an appropriate program for the Student prior to the Student being enrolled in the private residential program. The issue for determination

in the hearing, however, was whether the current program proposed by the Local System was appropriate.

It appears from a review of the record submitted that the Local System was meeting the educational needs of the Student in that he was able to maintain grade-level achievement. The behavioral disorders he exhibited were without the school setting. The psychological reports submitted by the Student's parents indicate that residential treatment was recommended in order to remove the Student from the home environment because of an inability to cope with the home situation rather than his inability to function within the educational environment provided by the Local System. The Hearing Officer, therefore, concludes that the Local System could provide an appropriate education program for the Student.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that the Local System could provide an appropriate education for the Student and the regional hearing officer erred in determining that an appropriate was not available without any evidence to support that conclusion. The Hearing Officer, therefore, recommends that the decision of

the Dekalb County Board of Education rejecting the recommendation of the regional hearing officer be sustained.

L. O. Buckland
L. O. BUCKLAND
Hearing Officer

Appearances: For parents, John N. Leiter; for Local Board, Charles L. Weatherly.