

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: ROBIN S.

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CASE NO. 1980-31

O R D E R

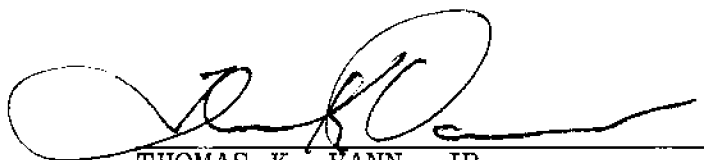
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Regional Hearing Officer herein appealed from by the Thomaston City Board of Education is hereby reversed.

Mr. Stembridge was not present.

This 8th day of January, 1981.

A handwritten signature in black ink, appearing to read 'T. K. Vann, Jr.', written over a horizontal line.

THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE:

ROBIN S.

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REPORT OF  
HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by both the the City of Thomaston Board of Education (hereinafter "Local Board") and the parents of Robin S. (hereinafter the "Student"), from the recommendations of a regional hearing officer concerning the payment of visual evaluations and visual therapy for the Student. The Local Board contends that it is not required to pay for the evaluations and the parents contend the Local Board must pay for both the evaluations and the therapy. The Hearing Officer recommends that the decision of the Local Board rejecting the recommendations of the regional hearing officer be affirmed.

## PART II

### FINDINGS OF FACT

The Student is enrolled in the EMR class in the Thomas-ton City School System (hereinafter "Local System"). The Student has vision difficulties and qualifies as a handi-capped student.

A hearing was held before the regional hearing officer on September 23 and 24, 1980. The hearing officer issued her report on October 1, 1980. The Local Board rejected parts of the recommendation of the regional hearing officer on October 15, 1980, and the Student's parents appealed parts of the recommendation on October 29, 1980. The parties re-quested the State Board of Education to delay rendering a de-cision until the January, 1981, meeting in order to present briefs on the issues.

The Student's teacher noted she was having vision prob-lems and asked the Cooperative Education Service Agency ("CESA") visual program teacher if it would be possible to test the child and enroll her in the visual program. The CESA visual program teacher instructed the EMR teacher that it would be necessary for the Student to be observed and then a doctor's evaluation would have to be made before the Student could be enrolled in the visual program. The EMR teacher told the parents that an evaluation would be necessary

in order to start the process. As a result, the Student's parents obtained an evaluation from a local optometrist. The Student was then enrolled in the visual program. The local optometrist, however, recommended to the Student's parents that the Student should be observed by an optometrist in another city. The Student's parents made arrangements to meet with the distant optometrist for an evaluation and determination of the visual needs of the Student. The parents then requested a placement meeting, which was held on March 12, 1980, to determine the visual program for the Student. After the March 12, 1980, meeting, the Student was evaluated by the distant optometrist and a program of visual therapy was prescribed in the doctor's office on a weekly basis. Both of the Student's parents accompanied her to the distant optometrist's office.

The regional hearing officer found that the necessity of a visual evaluation was told to the Student's parents by the Local System, but the parents were not informed that an evaluation would be paid for by the Local System. The regional hearing officer determined that the parents obtained an evaluation from the local optometrist and then obtained further evaluation from the distant optometrist upon the recommendation of the local optometrist.

As a result of the evidence presented, the regional

hearing officer concluded that the Local System was required to pay for the visual evaluations performed by both optometrists and the Local System was also required to pay for the travel and food of the Student's parents in carrying her to the distant optometrist. The regional hearing officer also decided that the Local System did not have to pay for the visual therapy provided by the distant optometrist since it was a medical service and did not, therefore, fall within the definition of "related services", as provided by the regulations under Public Law 94-142. The regional hearing officer also determined that the individual educational program ("IEP") provided by the Local System would provide a free appropriate public education for the Student, but the Local System was required to send copies of the IEP to the parents.

### PART III

#### CONCLUSIONS OF LAW

The two issues to be decided in this appeal are whether the Local System is required to pay for the initial visual evaluations performed by both the local optometrist and the distant optometrist, and whether the Local System is required to provide visual therapy by paying for the program administered by the distant optometrist. The Local System appeals the determinations of the regional hearing officer that it is

required to pay for the evaluations made by both the local and the distant optometrist and the determination that it is required to pay for the travel and meals of the Student's parents when they accompanied the Student to obtain the visual evaluation. The Local System also appeals the regional hearing officer's determination that it must mail IEPs to the parents when they are completed. The Student's parents appeal the regional hearing officer's determination that the Local System has provided for a free appropriate public education and that the Local System is not required to provide visual therapy through the services of the distant optometrist.

The Local Board argues that there are two reasons it should not be required to pay for the visual examinations obtained by the parents. The first reason is the Local Board's contention that the evidence shows that the request for an evaluation was made by the CESA employee and not by the Local System. The second reason argued by the Local Board is that the services provided by the optometrists are not medical services and, therefore, are not reimbursable. As for the Local Board's first argument, the transcript shows that the request for an evaluation was given to the parents by the EMR teacher employed by the Local System. Although the CESA employee told the EMR teacher that an evaluation was necessary in order to place the Student within the visual

impaired program, the request was actually conveyed to the parents by the employee of the Local System. The Hearing Officer, therefore, concludes that the request for an initial visual evaluation was made by the Local System as a prerequisite to placement of the Student within any visual impairment program.

The regulations provide that a student's individualized education program must contain a statement of the specific education and related services to be provided to the child. The term "related services" is defined to mean:

"... transportation and such ... corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes ... physical and occupational therapy, ... and medical services for diagnostic or evaluation purposes."  
45 C.F.R. §121a.13(a).

"Medical services" is defined to mean:

"... services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services."  
45 C.F.R. §121a.13(b)(4).

An evaluation, therefore, must be performed by a licensed physician in order for a school system to be authorized to make payment for the services. Under the provisions of Georgia law, an optometrist is not a licensed physician. Ga. Code Ann. §§84-907, 84-1107. The Hearing Officer, therefore, concludes that the Local System cannot pay for the services

performed by either of the optometrists since they are not licensed physicians. It also follows that the Local System is not required to pay for the travel and food used by the parents in obtaining the evaluation.<sup>1</sup>

The Student's parents object to the regional hearing officer's determination that the Student's IEP provided for a free appropriate public education because it does not provide for visual therapy to be provided by the optometrist. There is evidence in the transcript, however, to support the hearing officer's determination. The Local System is able to provide a visual therapy program for the Student through the local CESA. There is no requirement that the visual therapy be provided by an optometrist. The Hearing Officer, therefore, concludes that the regional hearing officer's determination that the IEP provided for a free appropriate public education is supported by the evidence.

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<sup>1</sup> The Hearing Officer is of the opinion that the requirement for providing transportation does not include any requirement to pay for the costs of travel to obtain medical evaluations, but merely pertains to the providing of transportation in order to obtain special education.



PART IV  
RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs submitted by counsel, the Hearing Officer is of the opinion that the regional hearing officer erred in recommending that the Local System should make payment for the services provided to the Student's parents by the optometrists, and for the costs of travel and food of the parents. The Hearing Officer is also of the opinion that the regional hearing officer erred in recommending that the Local System is required to send copies of the final IEP to the parents if there has not been a request for such final copy. The Hearing Officer is of the opinion that the Local Board erred in deciding that the Local System had not requested that a visual examination should be made. The Hearing Officer, therefore, recommends that the decision of the Local Board rejecting the recommendations of the regional hearing office should be sustained. The err on the part of the Local Board in determining that the Local System did not recommend the visual examination is of no consequence in the determination of the issues and does not, therefore, have to be reversed.

  
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L. O. BUCKLAND  
Hearing Officer