

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: EDWARD S.

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CASE NO. 1980-35

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 appeal herein is dismissed because the appeal was not timely filed.

Mr. Stembridge was not present.

This 8th day of January, 1981.



THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: EDWARD S. : CASE NO. 1980-35
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: REPORT OF
: HEARING OFFICER

On November 14, 1980, the Georgia Department of Education received a letter from the parent of Edward S. (hereinafter the "Student") which stated that an appeal, from an interim decision of a regional hearing officer to continue a December 14, 1979 hearing in order to provide for additional evaluation of the Student, had been filed on February 19, 1980 with the State Board of Education. Based on motions and witnesses' testimony, the regional hearing officer had concluded that additional testing was necessary in order for an appropriate placement to be determined. The regional hearing officer orally made her decision to continue the hearing and subsequently issued a written decision dated January 21, 1980. The Georgia Department of Education, however, did not have any record of the appeal.

The record submitted shows that the Student was in a private residential program at the time of the hearing. He had been placed in the program by Atlanta Public School

System (hereinafter "Local System"). The Local System was seeking to change the Student's placement into another program within the public school system. When the hearing opened, the Local System requested a continuance in order to obtain an independent evaluation of the Student. Based upon the documents submitted to her and the arguments and comments made, the regional hearing officer decided that additional testing was necessary and ordered a continuance.

The Student's parent claims that an appeal was made to the State Board of Education on February 19, 1980, contesting the regional hearing officer's determination that additional testing was necessary. Neither the State Board of Education nor the Local System has any record of the appeal being filed. The Local System argues that the appeal was not timely filed and the State Board of Education does not have jurisdiction to review the appeal. The Hearing Officer requested the parties to attend a hearing and present evidence relevant to the timeliness of the appeal, however, the Student's parent notified the Hearing Officer by letter received on the day before the hearing that she would not be able to attend the hearing, although no reasons were given.

The Hearing Officer has reviewed the evidence on file and concludes that no legally competent evidence is available to support the parent's contention that an appeal

was timely filed. The Hearing Officer, therefore, concludes that the appeal was not timely filed and the State Board of Education does not have jurisdiction to review the decision of the Atlanta Board of Education which adopted the recommendation of the regional hearing officer that additional testing of the Student was necessary.

Even if the appeal was timely submitted, the Hearing Officer is of the opinion the appeal is now moot. The additional documents submitted to the State Board of Education show that the placement of the Student was not changed as a result of the continuance, the placement was as desired by the Student's parent, and a subsequent placement staffing was made for the 1980-81 school year. There are, therefore, no decisions to be made with regard to the appropriateness of the decision of the regional hearing officer to continue the December 14, 1979 hearing. If there is any question regarding payment of the educational program at the private residential school, the question should be addressed at an appropriately requested hearing before a regional hearing officer. It, however, appears that the Local System did not attempt to obtain the additional testing through judicial means or a request for enforcement of the regional hearing officer's decision. A student's placement cannot be changed during the pendency

of any proceedings, 45 C.F.R. §121a.513, and if a student has been placed in a private program, the local system is responsible for the costs thereof, 45 C.F.R. §121a.401. If a parent refuses to consent to an evaluation, the local system can obtain the evaluation without the parent's consent, 45 C.F.R. §121a.504. See also, "Procedural Safeguards", GEORGIA SPECIAL EDUCATION ANNUAL PROGRAM PLAN, Part VII, D, 1.

Based upon the foregoing, the Hearing Officer is of the opinion that the appeal herein should be dismissed because it was not timely filed.



L. O. BUCKLAND
Hearing Officer