

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: STEVEN M.

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CASE NO. 1980-38

O R D E R

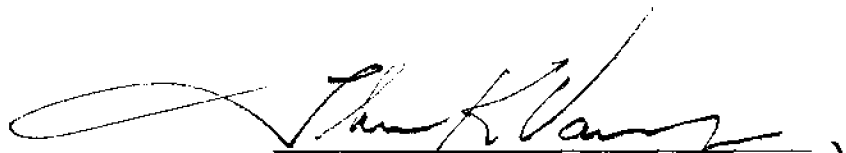
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Atlanta City Board of Education is hereby sustained.

Mr. Stembridge was not present.

This 8th day of January, 1981.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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REPORT OF  
HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an automatic appeal by the Atlanta Board of Education (hereinafter "Local Board") from the findings and recommendation of a regional hearing officer that the Atlanta Public School System (hereinafter "Local System") did not have an appropriate placement for Steven M. (hereinafter "Student"). The Local Board appealed on the basis the regional hearing officer erred in finding that a program was not available within the Local System and further erred by not permitting evidence to be submitted regarding the Student's current placement. The Hearing Officer recommends that the decision of the Local Board rejecting the findings and recommendation of the regional hearing officer be reversed.

## PART II

### FINDINGS OF FACT

The Student is fourteen years old and identified as having severe learning disabilities. He qualifies as a handicapped student under P.L. 94-142.

The hearing before the regional hearing officer was held on November 10 and 11, 1980. Prior to the hearing, but after the placement meeting for the Student, the Student's parent enrolled him in a private residential facility. The student had not previously been enrolled in a public educational facility; all of his previous schooling had been in private schools. The regional hearing officer issued her report on November 17, 1980. The Local Board decided on December 8, 1980 not to accept the regional hearing officer's finding that a learning disabilities placement in a self-contained classroom was inappropriate. The Local Board did not state any reasons for disagreeing with the regional hearing officer's recommendation, but reasons were set forth in the brief submitted to the State Board of Education.

At the hearing before the regional hearing officer, the parties did not disagree on the individualized education program ("IEP") that had been prepared for the Student. The IEP provided that the Student needed, as a long term goal, to develop age appropriate socialization skills, and for short

term goals, he needed to: increase interaction with peers; increase interaction in non-classroom settings, and decrease his dependency on all adults. The Local System proposed to place the Student in a self-contained learning disabilities class in a high school setting and the Student's parent objected on the ground the Student would not be able to function in a high school setting.

The regional hearing officer found the Student would not be able to appropriately function in a setting which included only students who were of his own age and older. The Student also had an inability to cope with noises which caused him to begin crying or go into a withdrawal state. The regional hearing officer found that the proposed placement by the Local System was not appropriate and recommended that the Local System consider placing the Student into a residential program outside the Local System.

### PART III

#### CONCLUSIONS OF LAW

The only issue to be decided in this appeal is whether the placement recommended by the Local System was appropriate for the Student. The Local System has also raised the issue that the regional hearing officer erred in considering any evidence concerning the appropriateness of the Student's

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within the self-contained classroom. The proposed placement, therefore, did not provide for the Student to be able to accomplish the long or short-range goals either within the classroom or in high school setting. The Hearing Officer,

therefore, concludes that the regional hearing officer correctly determined that the Local System did not have an appropriate placement available for the Student.

The appropriateness of the Student's present placement is not in issue in this appeal. The Student was placed into the private residential facility by his parent rather than by the Local System. Under 45 C.F.R. §121a.401, a local system must provide special education and related services when the student is placed in or referred to a private school or facility by the local system. In this case, the Local System did not place or refer the Student in the private school and, therefore, is not responsible for insuring the appropriateness of the Student's program.

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 there is evidence to support the regional hearing officer's determination that the placement recommended for the Student by the Local System was not appropriate because of its location. The Hearing Officer, therefore, recommends that the decision of the Atlanta Board of Education rejecting the findings and recommendation of the regional hearing officer should be reversed.

  
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L. O. BUCKLAND  
Hearing Officer