

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: VICTOR B.

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:

CASE NO. 1981-1

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 is hereby sustained.

Mr. McClung was not present.

This 12th day of February, 1981.



THOMAS K. VANN, JR.
Vice Chairman for Appeals

FEB 9 1981

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: VICTOR B. : CASE NO. 1981-1
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: : REPORT OF
: : HEARING OFFICER
: :

PART I

SUMMARY OF APPEAL

This is an appeal by the parent of Victor B. (hereinafter "Student") from the decision of a Regional Hearing Officer that the Gwinnett County School System (hereinafter "Local System") could provide a free, appropriate, public education for the Student. The Hearing Officer recommends that the decision of the Regional Hearing Officer be sustained.

PART II

FINDINGS OF FACT

A hearing was held before a Regional Hearing Officer on October 29, 1980, and November 10, 1980. The Regional Hearing Officer issued a report on November 26, 1980. The Regional Hearing Officer found that the Individualized Education Plan ("IEP") prepared by the Placement Committee of the Local System would meet the educational needs of the Student, and that the Local System could provide a program to implement the IEP. The Gwinnett County Board of Education (hereinafter "Local Board") adopted the recommendation of the Regional Hearing Officer on December 2, 1980. An appeal to the State

Board of Education was filed by the Student's parent on December 29, 1980.

The Regional Hearing Officer, in part, found that:

1. The Student was a 17-year-old enrolled in a private residential facility.

2. The Student was diagnosed as being hyperkinetic and suffering from childhood schizophrenia.

3. The Student had been enrolled in special education programs since age seven and had been placed in various institutions since age eleven because of behavioral problems arising from his home environment.

4. The Student's parents were inconsistent in their approach. The Student's mother set limits while his father was very lenient. As a result, arguments erupted among all three of them.

5. The Student did not have any problems in the school environment. His academic performance has been adequate in a structured classroom situation.

6. Residential treatment was recommended because of the Student's disruptive behavior while in the home.

7. The Local System has a program which has structure and experienced personnel.

Based upon his findings, the Regional Hearing Officer decided that the IEP developed by the Placement Committee of the Local System would meet the educational needs of the Student and that the Local System's program could implement the IEP.

PART III

CONCLUSIONS OF LAW

During the hearing before the Regional Hearing Officer, the Student's parent argued that it was necessary to remove the Student from the home because of his behavior problems. The Student's parent rejected the recommendation of the Placement Committee to place the student in a self-contained classroom on the grounds that if he was subjected to the home environment, the problems he would encounter in the home would decrease his ability while in the school environment. The Student's parent also argued that the self-contained classroom was insufficient because of the recommendations made by professionals not associated with the Local System that the Student required residential treatment.

The Hearing Officer concludes that the records submitted supports the decision by the Regional Hearing Officer. The Student has not exhibited any academic problems and has been able to learn while in a structured classroom environment. The Local System has a program which does provide a structured classroom environment with adequate support personnel. The recommendations for a residential program were made in order to remove the Student from his home environment and to provide him with psychiatric and psychological counseling. The residential treatment was not required because of the Student's educational needs.

The issue before the Regional Hearing Officer was whether

the Local System could provide a free, appropriate, public education for the Student. If the Local System can provide the Student with a free, appropriate, public education, then it has met its obligations to the Student. The fact that the Student must be placed in an institution does not establish the Local System's inability to provide a free, appropriate, public education. The ability of the Local System to provide an adequate program is not dependent upon the Student's home environment, the Student's inability to cope or relate to his parents, or the Student's inability to control his behavior. Notwithstanding his behavior problems, the Student has been able to learn in the structured classroom environment. The Local System can provide such a structured environment for the Student. The Local System, therefore, has met its obligation to provide an adequate program for the Student.

A local school system is required to provide a residential program only if such a program is necessary in order to provide a student with special education and related services. See, 45 CFR § 121a.302. There is no requirement placed on a local school system to provide a residential program if the need for a residential program arises because of some factor other than the special education needs of a student. As pointed out in the case of In Re Richard H., Case No. 1980-28, if a student must be provided a residential program because of his medical or psychiatric needs rather than his educational needs, the local school system is not required to provide the student with a residential program if it otherwise

has an adequate program available for the student. In the instant case, the Student's special educational needs can be met outside a residential program. The Local System has, therefore, fulfilled its responsibilities in having available a free, appropriate, public education for the Student even if he must have residential treatment.

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 has an adequate program for the Student and that the evidence contained in the records supports the decision by the Regional Hearing Officer. The Hearing Officer, therefore, recommends that the decision of the Regional Hearing Officer be sustained.

(Pat Smith, appearing for parent; Bill Shubert, appearing for Gwinnett County School System)

L. O. Buckland

L. O. Buckland Hearing Officer