STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: SCOTT K. : CASE NO. 1981-3

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

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STATE OF GEORGIA

IN RE: SCOTT K.	:	Case No. 1981-3
	:	
	:	REPORT OF
	:	HEARING OFFICER
	:	

PART I

SUMMARY OF APPEAL

This is an appeal by the DeKalb County Board of Education (hereinafter "Local Board") from the decision of a regional hearing officer that Scott K. (hereinafter "Student") is a "handicapped child". The Student's parents also appeal the regional hearing officer's decision that the program offered to the Student by the DeKalb County School System (hereinafter "Local System") will be an appropriate placement for the Student. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART II

FINDINGS OF FACT

The Student, who is 17 years old, was enrolled in a private residential facility at the time of the hearing before the regional hearing officer. Tests of the Student indicate that he is in the superior range of intelligence. Beginning in the seventh grade, however, the Student's academic grades

steadily declined until he had to repeat the ninth grade. When he was age 14, the Student began using drugs. At the end of his tenth grade year, in May, 1979, the Student was involved in a fire-setting incident within the high school he attended. After a hearing, the Local Board expelled the Student until such time as a psychological report was obtained to determine if he could re-enter any of the programs within the Local System.

On the day following his expulsion, the Student's parents enrolled him in an outpatient program at a psychiatric hospital. During the month of June, 1979, the Local System contacted the Student's parents to arrange for a psychological evaluation. Upon learning that the Student had been enrolled in the private hospital, the representative of the Local System informed the parents that they should contact the Local System if they decided to readmit the student in the Local System.

While he was enrolled in the private hospital, the Student continued with his usage of drugs. In March, 1980, the Student was transferred to the private residential facility in order to remove him from his home environment and to restrict his access to drugs.

In January, 1980, the Student's parents contacted the Local System and requested information concerning special education. The Local System sent the parents some forms and explanations of their rights regarding special education. The parents next contacted the Local System in May, 1980, and

requested that the Student be evaluated. A placement committee which, included the Student's parents, met in September, 1980, in order to prepare an individualized educational program ("IEP") and recommend placement of the Student. The Student's parents rejected the placement committee's recommendation that the Student be placed in a severely emotionally disturbed program located in one of the regular high schools operated by the Local System. The parents then requested a hearing before the regional hearing officer to determine if the proposed program was appropriate for the Student. In addition, the parents requested that the Local System pay for the private treatment obtained by the Student during the period May, 1979, and September, 1980, while he was expelled from the Local System.

The hearing before the regional hearing officer was held on December 12 and December 16, 1980. The regional hearing officer issued his report on December 24, 1980. The Local Board met on January 5, 1981, and rejected the regional hearing officer's determination that the student was handicapped but accepted the remainder of the decision, which included the determination that the Local System could provide an adequate program for the Student. The Local Board's rejection of the regional hearing officer's determination that the student was handicapped resulted in an automatic appeal to the State Board of Education. The Student's parents appealed the regional hearing officer's determination that the Local System could provide an appropriate program for the Student.

Additionally, the parents appealed the regional hearing officer's decision that the Local System was not responsible for the payment of any costs incurred by them during the period May, 1979 and September, 1980, while the Student was enrolled in the private program.

The regional hearing officer found that the Student was handicapped within the definition contained in the Federal Regulations issued under Public Law Number 94-142. He also found that residential placement of the Student was not the least restrictive environment and that the severely emotionally disturbed program at the high school operated by the Local System could adequately meet the Student's educational needs. The regional hearing officer pointed out that the Student was in the superior range of intelligence, but had a history of poor and failing performance within the regular classroom. The Student's prognosis for recovery was good if the Student continued to receive individual and group counseling and therapy. The hearing officer also found that no evidence was offered that the program operated by the Local System differed substantially from the private residential program the Student was presently attending.

PART III

CONCLUSIONS OF LAW

The Local Board maintained throughout the hearing and argues on appeal that the Student is not handicapped. The

Student's parents appealed from the decision that the severely emotionally disturbed program was appropriate on the grounds the Local System could not provide the necessary related services. Additionally, the parents asked the State Board of Education to find that the Local System is liable for the costs incurred by them during the period between the Student's expulsion and the date the IEP was prepared, i.e. May, 1979 through September, 1980. Because of the conclusions reached herein with respect to the issues raised by the Student's parents, the Hearing Officer has concluded that it is unnecessary to decide decide whether the Student was handicapped.

The regional hearing officer found that the Student needed individual and group counseling and therapy and that these services could be provided by the Local System. Additionally, he found that the program could meet the educational needs of the Student. The Student's parents argue on appeal that the evidence does not support such findings. They first argue that the Student will not receive any individual therapy or counseling and that the psychologist employed to provide group counseling is available only one hour per week. Additionally, they argue that the Student will have access to drugs before school, during the lunch period, and after school.

With respect to the parent's first contention, that individual and group therapy and counseling will not be available to the Student, the record clearly shows that such services are available for the Student. Although the parents argue that the amount of such services will be insufficient, the

amount of counseling and therapy needed by the Student was never established. It was also not established that the Local System would be unable to provide the amount of such services as they were determined to be necessary. The Hearing Officer, therefore, concludes that the evidence supports the regional hearing officer's finding that individual and group counseling and therapy were available for the Student.

With respect to the Student's access to drugs, the regional hearing officer held that the Local System did not have to provide a residential program because the 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 which cannot be offered within the school system." The Local System can provide the special education needs outlined in the Student's IEP without placing him in a residential program, and removing the Student's access to drugs is not a "related service". See, 45 C.F.R. § 121a.13.

The Hearing Officer concludes that the evidence supports the finding by the regional hearing officer that the Local System can provide an appropriate program for the Student. The Hearing Officer also concludes that the Local System does not have to provide a residential program in order to limit the Student's access to drugs.

The parents maintain that the regional hearing officer erred in holding that the Local System did not have to pay for the private services rendered to the Student during the

period May, 1979 through September, 1980. They contend that they were forced to place the Student into a private program because the Local System had expelled the Student. Since they were forced to place the Student into a private program, they maintain that the provisions of 45 CFR § 121a.403 are inapplicable because their placement was not voluntarily. The record, however, shows that the parents placed the Student into the private program one day after he was expelled. At the time of his placement into the private program, the Student had not been identified as a handicapped student. The Student's placement into the private program was not necessary to fulfill the requirements of an IEP since an IEP had not been prepared. Additionally, a hearing had not been held to determine if such a placement was necessary. The Hearing Officer, therefore, concludes that the regional hearing officer was correct in holding that the Local System was not responsible for the costs incurred by the parents during the period May, 1979 through September, 1980, because the parent's actions were taken without the benefit of an evaluation, the participation of the Local System, the preparation of an IEP, or at a time when the Student had been identified as a handicapped student.

Since the Local System has agreed to provide the Student with special education services, it is unnecessary to make a determination whether the Student is handicapped. Regardless of his classification, the Student's placement would not be changed as a result of the actions taken by the Local Board and its disagreement with the decision of the regional hearing

officer. A decision is also unnecessary with respect to determining whether the Local System should be responsible for the costs incurred during the period May, 1979 through September, 1980, since it has been previously concluded that the actions of the Student's parents preclude their entitlement to any reimbursement. The Hearing Officer, therefore, concludes that the issue of whether the Student is handicapped does not present any controversy between the parties and does not require a decision.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the Local System can provide the Student with a free, appropriate public education by placing him in the severely emotionally disturbed classroom contained in one of the high schools operated by the Local System. The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be sustained.

(Greene, Buckley, DeRieux & Jones; Eileen M. Crowley, for parents; Weekes, Candler, Sams & Weatherly; Charles Weatherly, for DeKalb County Board of Education)

L. O. Buckland
Hearing Officer