

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: CHRISTOPHER P.       :  
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CASE NO. 1981-5

O R D E R

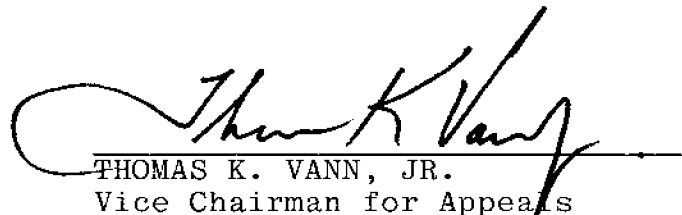
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 reversed.

Mr. McClung was not present.

This 12th day of February, 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 Bibb County Board of Education (hereinafter "Local Board") from a decision of a regional hearing officer concerning the special education placement of Christopher P. (hereinafter "Student"). The appeal is based on the Local Board's determination the Regional Hearing Officer failed to make a proper decision regarding the placement of the Student. The Hearing Officer recommends that the decision of the Regional Hearing Officer be reversed.

PART II

FINDINGS OF FACT

The Student was enrolled in a "high risk" first grade classroom after spending one year in a self-contained learning

disabled class. At the time of the hearing before the Regional Hearing Officer, the Student was seven years old and had been evaluated as having average intelligence.

In May, 1980, after the Student had completed one school year in the learning disabled class, the Student's teacher and the Student's parents agreed that the Student should begin the 1980-1981 school year in the learning disabled class. During the summer, the Student's parents requested that the placement of the Student be changed to a regular first grade classroom. The parents obtained a new psychological examination of the Student, gave it to the Bibb County Public School System (hereinafter "Local System"), and requested a placement committee meeting. The placement committee met on September 3, 1980, and decided that the Student could go into the regular classroom with ten hours per week of resource assistance. The Student's parents agreed with the placement.

When the Student enrolled in the school, he was placed in the "high risk" classroom which differed from the other first grade classrooms only in that it had two teachers rather than one. The Student's parents objected to the Student obtaining resource assistance and requested a due process hearing. A mediation meeting was held on November 11, 1980, and it was decided to reduce the amount of resource help from ten

hours per week to five hours per week. The parents nevertheless elected to proceed with the due process hearing before a regional hearing officer for the purpose of removing all resource assistance for the Student.

The hearing before the Regional Hearing Officer was held on December 11 and 17, 1980, and her report was issued on December 29, 1980. The Local Board met and rejected the decision of the Regional Hearing Officer on January 15, 1981.

The Regional Hearing Officer found, in part, that the Student was performing at the top of his class and did not have any difficulty in learning what he was taught. The witnesses testified that the Student was functioning as a normal first grader, but was not functioning as a second grader. The private psychologist employed by the Student's parents recommended that the Student continue to receive resource assistance even though the Student had made significant gains as a result of being in the self-contained learning disabled class during the first year in school. The Regional Hearing Officer concluded that the placement in the high-risk first grade classroom with learning disabilities resource "is not needed and therefore is not appropriate and is too restrictive." The Regional Hearing Officer, however, then went on to conclude that the question of placement of the Student was a decision that would have to be made by the regular school

administration. She then decided that the Local System needed to conduct a placement re-evaluation and decide if the Student should be placed in a high-risk class or in a regular class.

### PART III

#### CONCLUSIONS OF LAW

The Local Board complains on appeal that the Regional Hearing Officer (1) did not make a decision; (2) improperly considered the Student in relation to his regular class placement rather than considering his unique and special needs; (3) did not consider the fact the Student has unique needs which require special education services, and (4) improperly decided the Local System needed to conduct further evaluations of the Student in order to make a placement decision.

As the facts indicate, the Student was in a high-risk first grade classroom and was receiving five hours per week of assistance from a resource teacher. The testimony of all the witnesses indicates that the Student has a learning disability. The learning disability is manifested by deficits in the Student's perception, vocabulary, and fine motor skills. There is no question the Student has made great strides in overcoming the disabilities, but they nevertheless exist to some degree. Although he is functioning as well as other first grade students, the evidence establishes that the

existence of these deficits causes the Student to be considered a "high-risk" student with the need for continued resource assistance.

There was no indication in the record that the high-risk first grade class is a more restrictive environment than other first grade classes. No evidence was presented that the high risk student does not associate with other first grade students on a regular basis, or that the classroom is separated from the other classrooms in any manner that would set the students apart from any other first graders. The only difference from other first grade classes is the fact there are two teachers in the classroom rather than one. This does not establish the class as a more restrictive environment than another class. The Hearing Officer, therefore, concludes that there is no evidence to support the Regional Hearing Officer's decision that the high-risk first grade classroom was not needed, was inappropriate, and was not the least restrictive environment for the Student.

There is nothing in the record to indicate any additional need for testing. During the hearing, the Student's parents pressed the Local System on the fact the Local System had not provided any testing of the Student. The Student's parents, however, provided current testing which was the basis for the placement decision made on September 3, 1980. The Local


System is not required to provide additional testing and duplicate previously obtained information even if the information was provided by the Student's parents. The Hearing Officer, therefore, concludes that the Regional Hearing Officer erred in deciding that the Local System had to provide additional testing and evaluation of the Student in order to determine placement.

It appears that much of the controversy in this case is the result of misunderstanding and a lack of communication between the Local System and the Student's parents. The testimony received during the hearing indicates that the Local System intended to place the Student in the regular first grade classroom with resource assistance during the week, but this placement was not made because of some insistence on the part of the Student's parents which resulted in the placement in the high-risk first grade classroom. The Student's parents insisted at the hearing that the Local System place the Student in a regular classroom without providing any resource assistance. The Student's parents also agreed to the Student's placement on September 3, 1980, but then requested and obtained a reduction in the number of hours of resource assistance. The parents, nevertheless, elected to proceed with the due process hearing which they had requested before the mediation. The parents apparently

are concerned that some badge of infamy will be placed on the Student because he is receiving resource assistance. As stated by the the psychologist employed by the parents, "I have difficulty knowing why resource should cause difficulty." (Transcript, p. 281).

PART IV  
RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record presented, the Hearing Officer is of the opinion there is no evidence to support the Regional Hearing Officer's decision the Student's current placement is not appropriate and is not in the least restrictive environment. The Hearing Officer is also of the opinion the Regional Hearing Officer erred in deciding that the Local System had to provide additional testing and evaluation of the Student in order to make a placement when current valid evaluations were already in existence. The Hearing Officer, therefore, recommends that the decision of the Regional Hearing Officer be reversed.

  
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L. O. BUCKLAND  
Hearing Officer

(Appearances before Regional Hearing Officer: Lorange Beard, for parents; Michael VanWyck, for Bibb County School System)