

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: A.G.S. & K.S.

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CASE NO. 1981-9

O R D E R

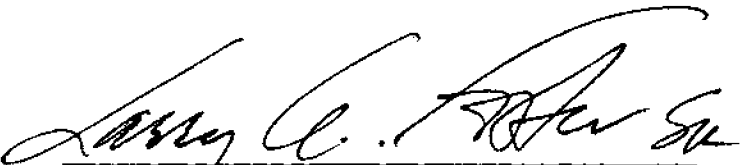
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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. Stembridge, Mr. McClung and Mrs. Oberdorfer were not present.

This 9th day of April, 1981.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: K.S.

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CASE NO. 1981-9
REPORT OF
HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from the decision of a regional hearing officer regarding the special eaducation placement of K.S. (hereinafter "Student"). The appeal by the Student's parent is based upon the contentions the notice of the proposed placement was inadequate, the individualized educational program, (hereinafter "I.E.P.") was improperly prepared, and the recommended placement was improper because it did not contain a learning disabilities component. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART II

FINDINGS OF FACT

It was stipulated by the parties that the Student had a learning disability. During the 1979 - 1980 school year, he

was placed in a learning disabilities resource program in the local high school. Throughout the year, the Student was involved in a number of incidents which resulted in disciplinary action. The learning disabilities teacher recommended that the Student be considered for placement in the "APOLLO" program. The APOLLO program is a cooperative program designed for behavioral disordered and severely emotionally disturbed students.

A notice of a special education placement committee meeting was sent to the Student's parent on October 21, 1980. The meeting was held on October 27, 1980, and the Student's parent signed a consent to placement in the APOLLO program. In December, 1980, the Student's parent filed a request for a hearing to determine if she had received proper notice regarding the placement and whether placement in the APOLLO program was appropriate. The hearing before the regional hearing officer was held on January 26, 1981, and she issued her decision on February 3, 1981. The Student's parent filed her appeal from the regional hearing officer's decision on March 4, 1981.

The regional hearing officer decided the Local School System had complied with all procedural due process requirements, and that the APOLLO program was appropriate for the Student, but that a learning disability component and counseling of the Student and his parent would have to be added. The regional hearing officer found that the document used

to refer the Student listed the reasons for the referral, the tests relied on, the services offered to the Student before the referral, and the proposed action to be taken. The Student's parent received a complete listing of her rights as a parent, including the rights regarding notice. The Student's parent presented the notice of the placement committee meeting to her attorney before attending the meeting. At the placement committee meeting, the referral form which listed the tests and the previous placement of the Student were discussed. In addition, the available alternatives were discussed. The Student's parent participated in the discussion and signed her agreement to place the Student in the APOLLO program. The Local School System was not aware of any problems the Student's parent had in reading or understanding the process or the proceedings.

The regional hearing officer also found that the Student exhibited increased behavioral problems even during the period of time he was in the learning disabilities program. The tests and evaluations of the Student indicated a need for the Student to be placed within a structured atmosphere in order to work with his behavioral problems. The APOLLO program offered individualized instruction in the area of the Student's behavior disorder. Since, however, the APOLLO program did not have a learning disability component, and the Student had a learning disability, it was necessary for

the Local School System to provide such a component for the Student.

PART III

CONCLUSIONS OF LAW

The appeal to the State Board of Education listed six reasons why the decision of the regional hearing officer should be reversed. These reasons were: 1) the notice of the proposed change in placement sent to the Student's parent was improper; 2) the Student's I.E.P. was not developed in conformity with the federal regulations; 3) the APOLLO program is inappropriate because it does not have any qualified learning disabilities instructors; 4) the Local School System violated the federal regulations by not providing the Student with a continuum of alternative placements; 5) the APOLLO program is not the least restrictive environment for the Student and is therefore inappropriate, and 6) the Student's placement in the APOLLO program was inappropriate because he did not meet the placement eligibility requirements of the APOLLO program. The Franklin County Board of Education responds that the Student's mother was fully informed of all her procedural rights under law. She participated fully in the placement proceedings, had the advice of counsel, was given all of the available alternatives, was made aware of the reasons for the recommendation, consented to the

placement in the APOLLO program, and was aware the Student had been entered in the APOLLO program. As a consequence, the Student's parent was fully informed and the Local School System did not violate any of her rights. The Local Board also argues that the APOLLO program is the least restrictive environment for the Student because of his inability to cope within the regular classroom and the opportunity he has for attending regular classes as his behavior becomes appropriate.

The only issues raised by the Student's parent at the hearing before the regional hearing officer were whether the Student's parent had received proper notice regarding the change in placement, and whether placement within the APOLLO program was appropriate. These issues are covered by points 1, 3, and 5, above, in the appeal to the State Board of Education. Points 2, 4, and 6, which concern how the I.E.P. was developed, whether the Local School System provided a continuum of alternative placements, and whether the Student met the placement criteria of the APOLLO program, were not raised in the hearing before the regional hearing officer. If an issue is not raised in the initial hearing, it cannot be raised for the first time on appeal. See, e.g., Vowell v. Carmichael, 235 Ga. 387 (1975). The Hearing Officer, therefore, concludes that the issues to be addressed by the State Board of Education are whether the Student's parent was given proper notice of the change in placement, whether the APOLLO program is

inappropriate because it does not have any qualified learning disabilities teachers, and whether the APOLLO program is the least restrictive environment for the Student.

The issue regarding the propriety of the notice to the Student's parent arises from the wording contained in 45 C.F.R. §121a.505(2), which states that the notice given to the parents of a handicapped child must contain:

"A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;"
Id.

In addition, 45 C.F.R. §121a.505(3) requires a description of the tests and other evaluation procedures upon which the proposed placement is based to be contained in the notice. The appeal contends that the initial notice to the Student's parent concerning the placement committee meeting held on October 27, 1980, did not contain a description of the options the Local School System considered and the reasons why those options were rejected, and it did not contain a description of the tests and evaluation procedures used in making the proposed placement. The regional hearing officer found that the Student's parent was informed about the available options during the course of the proceedings and, therefore, was given sufficient notice to comply with the regulations. In

addition, she was given access to the tests and evaluations of the Student before the placement decision was made by the placement committee.

Based upon a review of the record in the instant case, the Hearing Officer concludes that the failure of the Local School System to include a description of the available alternatives and a description of the tests and evaluation procedures used did not cause any harm to the Student's parent. During the course of the hearing before the regional hearing officer, it was brought out that the Student's parent could not read. As a practical result, it would be necessary for the Local School System to orally explain to her what rights she had, what options were available, and what tests and evaluation procedures were used in order for her to understand and receive notice. The principal purpose of the regulation is to insure that the parents of a handicapped student are properly informed so they can participate in the placement decision. Regardless of how much written material the Local School System provided to the Student's parent, she would not have been informed because of her inability to read. Whether it was planned or not, the Local School System used the best means available by explaining everything to the Student's parent during the course of the proceedings. Additionally, as pointed out by the regional hearing officer, the Student's parent was advised by

competant counsel before attending the placement committee meeting and after she had received the notice of the meeting. The Hearing Officer, therefore, concludes that the procedural due process rights of the Student's parent were not violated by the Local School System.

The second issue to be addressed is whether the placement in the APOLLO program is inappropriate because the program does not have any certified learning disability teachers. The regional hearing officer recognized the lack of a learning disabilities component in the recommended placement and decided the Local School System had to provide the Student with such instruction. If the Student is provided learning disability instruction, it is immaterial whether the teachers within the APOLLO program are certified learning disability instructors. The principal purpose of the APOLLO program is to provide the Student with a structured classroom setting in order to deal with his behavioral disorders. The Local School System can provide qualified learning disability instruction either within or without the curriculum of the APOLLO program. The Hearing Officer, therefore, concludes that the regional hearing officer properly decided that the APOLLO program was an appropriate placement for the Student if the Local School System provided special education instruction to the Student.

The appeal claims the APOLLO placement is

inappropriate because it is not in the least restrictive environment. The record, however, shows the Student had demonstrated an inability to function within the regular classroom setting. The APOLLO program provides a self-contained classroom setting, but it is located within a regular high school and the students have an opportunity to associate with the other students before class, during lunch, after class, and during class when they have demonstrated an ability to control their behavior. The Student has been removed from the regular classroom only to the extent necessary for the Local School System to provide him with behavioral disorder instruction and learning disability instruction. The Hearing Officer, therefore, concludes that regional hearing officer properly decided that the APOLLO program was the least restrictive environment for the Student.

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 the regional hearing officer properly concluded the Student's parent received proper and adequate notice of the change in the recommended placement and that placement in the APOLLO program was appropriate and provided the least restrictive environment for the Student.

Additionally, the regional hearing officer properly concluded that the Local School System needed to provide the Student with a learning disability component. The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be affirmed.

(Appearances: For Parent - Georgia Legal Services, Willie J. Woodruff, Jr.; Jonathan Zimring; Walden G. Housman, Jr.; For Franklin County School System - Harben & Hartley, Sam S. Harben, Jr.)


L.O. BUCKLAND
Hearing Officer