

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: XERNONA F.

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CASE NO. 1981-14

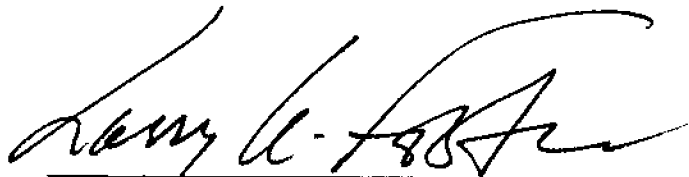
O R D E R

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.

This 11th day of June, 1981.

  
LARRY A FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: XERMONA F.

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CASE NO. 1981-14

REPORT OF

HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Xernona F. (hereinafter "Student") from the decision of a regional hearing officer that the Hall County School System (hereinafter "Local System") was not required to reimburse the parents for the costs incurred in a private school facility. The appeal was made on the grounds the decision of the regional hearing officer was contrary to the law and the facts. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART II

FINDINGS OF FACT

At the time of the hearing, which was held on March 10, 1981, the Student was eight years old and enrolled in a private school facility in the third grade. The Student was enrolled in the self-contained learning disabilities program

of the private school by her parents on September 8, 1980, after the Local System had offered to place the Student in a resource learning disabilities program located in the school in the Student's attendance zone. The parents rejected the placement recommended by the Local System because of their understanding that the Student would only receive two hours per day of learning disability instruction when they believed she needed more. In addition, the parents objected to the use of an "open classroom" concept in the learning disability class because of the Student's high distractability.

The regional hearing officer found that there was misunderstanding between the parents and the Local System concerning what was being offered by the Local System for the Student. The individualized educational program ("IEP") prepared for the Student provided that she would receive twenty hours per week, or four hours per day, of learning disability instruction. This instruction would take place in all academic areas and the Student would participate with non-learning disability students in music, art, and physical education. The regional hearing officer found that the learning disability instruction occurred in a classroom space with four walls rather than being an "open classroom". In addition, the regional hearing officer found that the number of pupils per teacher in the resource setting did not exceed seven

children at any time of instruction.

The regional hearing officer also found that the IEP did not contain any short term goals for the student and was, therefore, deficient. The regional hearing officer decided that the Local System should complete the short term goals section of the IEP.

The regional hearing officer found that the parents had voluntarily placed the Student in the private facility without a determination that the Local System did not have an appropriate program for the Student. The parents therefore, were denied reimbursement of the private facility expenses.

A review of the record shows that the IEP and the placement recommended for the Student were in conformity with the parent's demands and desires. The program offered, however, was denominated at a "resource program" rather than a "selfcontained program." The Student, nevertheless, would have been functioning as a self-contained student within a closed classroom setting.

### PART III

#### CONCLUSIONS OF LAW

The appeal contends that the Local System failed to provide the parents with sufficient information to adequately inform them of the program proposed for the Student, that

the Student required a self-contained program and the Local System did not have a self-contained program, that the Student's IEP failed to meet the legal requirements (because it did not state short-term goals), and that the program proposed by the Local System was not appropriate for the Student. Based upon these contentions, the Student's parents requested reimbursement for the private facility expenses and the costs of transportation. The Local System points out that the Student was never enrolled within the Local System, the placement within the private facility was done voluntarily by the Student's parents, and there was evidence in the record in support of the decision of the regional hearing officer.

Prior to the placement committee meeting, the Student's parents were told that a recommendation would be made that the Student receive only two hours per day of special education instruction. During the placement committee meeting, the parents objected to only two hours of special instruction and the placement committee recommended four hours per day of special education instruction. This recommendation was reflected on the IEP prepared for the Student and signed by the parents. The program designed for the Student was in fact a self-contained program, even though it was within the resource program of the Local System. The Hearing Officer, therefore, concludes that the Student's parents were informed

of the program to be offered the Student and there is no basis for contending that the Local System failed to inform the parents.

The Local System did not prepare the short-term goals for the Student because the Student's parents rejected the recommendation that the Student be placed within the program. The regional hearing officer decided that the Local System should prepare the short term goals for the Student, and thus complete the IEP. The failure to place the short term goals on the IEP, however, does not establish that the Local System was without an appropriate program for the Student. The Hearing Officer concludes that the regional hearing officer correctly decided that the IEP should be completed by adding the short term goals.

The record supports the regional hearing officer's finding that the parents voluntarily placed the Student in a private residential facility. If there is any evidence to support the decision of the regional hearing officer, the decision will not be distributed upon review. Antone v. Greene County Bd. of Ed. Case No. 1976-11. If the parents voluntarily place a child in a private facility, the local system is not required to pay the expenses of the private facility if an appropriate education can be provided within the local system. 45 C.F.R. §121a.403. The Hearing Officer, therefore, concludes that the Student's parents voluntarily placed her in a private

facility and are not entitled to receive reimbursement of the expenses they have incurred.

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 Student's parents voluntarily placed the Student within a private facility without enrolling the Student in the Local System, and they are not, therefore, entitled to receive compensation for the private facility costs, The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be sustained.

(Appearances: For Parents - Michael R. Casper; For Local System Harben and Hartey, Sam S. Harben, Jr.)

  
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L.O. BUCKLAND  
Hearing Officer