STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JAMES B. : CASE NO. 1981-17

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: JAMES B.	:	CASE NO. 1981-17
	:	
	:	REPORT OF
	:	
	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parent of James B., (hereinafter "Student") from the decision of a regional hearing officer that the DeKalb County School System (hereinafter "Local System") could provide an appropriate educational program for the Student, and that the Local System was not required to reimburse the Student's parent for the costs incurred when the Student was placed in a private residential program. The appeal is made on the grounds the regional hearing officer's decision overlooked several facts and misapplied the law. 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, the fourteen year old Student was enrolled in a private residential facility which he had

attended since March, 1980. He had been enrolled in the facility by his mother based upon the recommendation of the Student's treating psychiatrist. Prior to entering the private residential facility, the Student had been enrolled in the Local System's severally emotionally disturbed program located in the Druid Hills school. An individualized educational program ("IEP") was prepared for the Student on September 19, 1980. The placement committee recommended the Sexton Woods Severally Emotionally Disturbed Adolescent program for the Student. The Student's parent disagreed with the recommended placement on the grounds the Student required residential care. A regional hearing officer was timely appointed to conduct a hearing. By agreement of both counsel representing the Student's parent and the Local System, the hearing was postponed until March 24, 1981. The hearing concluded, after four days of testimony, on April 1, 1981, and the regional hearing officer issued a decision on April 11, 1981. The regional hearing officer decided that the recommended placement in the Sexton Woods program was appropriate. In addition, the regional hearing officer decided the Student's parent was not entitled to reimbursement of the private residential costs incurred during the March - September, 1980 period because the Student's parent had voluntarily placed the Student in the private residential program.

The regional hearing officer found that the Student had experienced difficulties both in and out of school since the first grade, and severe conflict existed with his parent. At the beginning of the 1979 - 1980 school year, the Student was enrolled in a regular high school program, but problems immediately developed and he was placed in the severally emotionally disturbed program at the Druid Hills School in November, 1979, pursuant to an IEP prepared for him and consented to by his parent. The Student continued to act in an aggressive manner, both in school and at home, after an initial period of adjustment. He struck a teacher with a board and was suspended for nine days. At this time, the school psychologist requested a meeting of all the significant adults in the Student's life in an effort to establish a family network. At the meeting, various alternative courses of action were considered by the participants. The school psychologist mentioned that other programs were available within the Local System, but, with the recommendation of the Student's treating psychiatrist, the Student's parent decided to enroll him in a private residential facility. During a six-week waiting period before his admittance into the private residential facility, the Student was relatively calm while living with his grandfather and still attending the Druid Hills program.

Based upon these findings, the regional hearing officer concluded that the Student's parent had voluntarily

withdrawn the Student from the agreed upon placement in the Druid Hills program without instituting an administrative challenge to the placement. The regional hearing officer, therefore, concluded that the Student's parent was not entitled to reimbursement for the period from March, 1980 through September, 1980. The regional hearing officer also concluded that the Student had been placed in the private residential facility primarily in order to resolve the conflicts that existed outside of the classroom. The Sexton Woods program offered by the Local System was able to provide all of the educational needs of the Student and meet the requirements established by the Student's IEP. The regional hearing officer, therefore, concluded that the Sexton Woods program offered by the Local System would be an appropriate educational placement for the Student.

PART III

CONCLUSIONS OF LAW

The appeal filed by the Student's parent assigns error both to the regional hearing officer's decision regarding placement of the Student and to the decision denying reimbursement for the private residential costs incurred during the period March - September, 1980. The parent argues that

the Student must be considered in light of his total circumstances. If there is an inability to cope during non-school hours, then the Local System must take this fact into consideration and provide the Student with a program which covers the non-school hours, notwithstanding the fact that the Local System can provide a program designed to meet the educational goals of the Student set forth in his IEP. The basic thrust of the parent's argument is that if the Student is not provided with a program which covers the non-school hours, he will not benefit from the time he spends in the program, because the conflicts outside the school will carry over into the classroom and prevent any progress.

As pointed out in the Hearing Officer's recommendation in the cases of In re Richard H., Case No. 1980-28, and In re Victor B., Case No. 1981-1, under Public Law 94-142, a local school system is charged with the responsibility of providing students with a special educational program designed to meet the student's unique needs. A local system is not required to provide a student with medical attention except for those incidental services involved in the placement and testing of the student. If a local school system can provide an educational program for the student, but the student nevertheless requires residential treatment in order to remove the student from a conflict environment, the local system has met it a responsibility and is not required to

provide the residential treatment for the student.

In the instant case, the record shows clearly that the Local System can provide the Student with the educational program set forth in the Student's IEP through its Sexton Woods severally emotionally disturbed, adolescent program. The program will provide structured classrooms, counselling, behavior management, peer relationships, and adjunct services. The Hearing Officer, therefore, concludes that the regional hearing officer properly decided that the Local System could provide an appropriate public education in the Sexton Woods program.

The Student's parent also contends that the regional hearing officer erred in denying reimbursement for the private residential expenses incurred during the period March, 1980, through September, 1980. The Local System contended, and the regional hearing officer so concluded, that reimbursement could not be made because the Student's parent voluntarily withdrew him from the Local System program and placed him in the private residential program. The parent, however, maintains that an emergency situation existed and it was necessary to immediately transfer the Student to the private residential program without waiting for and going through a hearing in order to contest the Student's placement. In addition, the Student's parent contends that the Local System failed to notify her

that it was necessary for certain procedural steps to be taken prior to making the transfer and the Local System is therefore estopped from denying payment of the costs incurred. As a third ground for assigning error to the regional hearing officer's decision, the Student's parent argues that it was unnecessary to contest the placement prior to the transfer, and because such a contest could take place at a later time.

45 C.F.R. §121a.403(a) provides:

> "If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school of facility, the public agency is not required . . . to pay for the child's education at the private school or facility."

If the local school system proposes to change the placement of the student, the parents of the student must be given an opportunity to have a hearing in order to consider the issue. 45 C.F.R. §§121a.504; 121a.506. If an administrative proceeding is initiated, then

> ". . . unless the public agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement." 45 C.F.R. §121a.5513. (emphasis added).

The regulations, therefore, provide that a parent can place a student in a private facility, but the local school system is not required to pay for the child's education at the

private facility if the system can otherwise provide a free appropriate public education. If the parents of a student feel that an emergency situation exists such that the student must be immediately placed into a private facility, a question may then exist whether the local system could provide the student with an appropriate education without the particular private facility. A parent could withdraw a student from the local system placement for a number of reasons and only if there is a disagreement concerning the appropriateness of the placement is any burden placed upon the local system to inform the parent of the rights to a hearing in order to determine whether the local system was providing or could provide an appropriate placement. The fact that a parent has chosen a particiular private facility does not establish the facility as the appropriate placement for the student in the absence of a showing that the local system could not offer any other program for the student. If the student's existing program or another program was shown to be appropriate by the local system, then the local system would not be under any obligation to pay for the private facility chosen by the parent.

The Hearing Officer concludes that the regulations provide enough flexibility to permit both a local school system and the parents to react to an emergency situation, but if the parent places the student in a private facility, without first going through the administrative procedures, the parent under-

takes the substantial risk that the local system does not otherwise have access to an appropriate educational program for the student.

In the instant case, there was evidence that the placement in the Druid Hills program was appropriate at the time the Student was voluntarily withdrawn, and if greater intervention was necessary, the Sexton Woods program was also available for the Student. The Hearing Officer, therefore, concludes that the regional hearing officer properly concluded that the Local System was not under any obligation to reimburse the Student's parent for the costs incurred at the private residential facility during the period March, 1980 through September, 1980.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions and the record submitted, the Hearing Officer is of the opinion the regional hearing officer properly decided that the Local System had an appropriate educational program for the Student and was not under any obligation to reimburse the Student's parent for the costs incurred in a private residential facility. The Hearing Officer, therefore, recommends that the

decision of the regional hearing officer be sustained.

(Appearances: For Parent - Steve McLaughlin; For DeKalb County School System - Charles Weatherly)

L. O. Buckland

L.O. BUCKLAND
Hearing Officer