

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DAVID L.

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CASE NO. 1981-23

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,

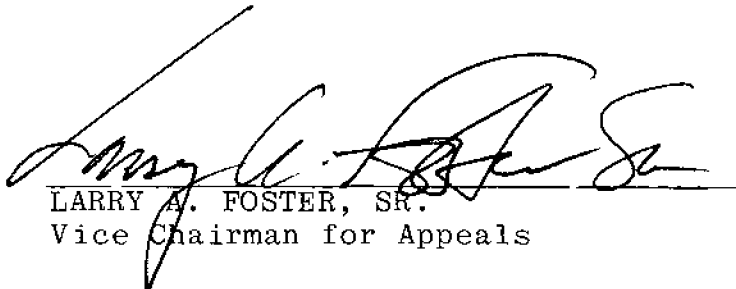
DETERMINES AND ORDERS, that the State Board of Education does not consider that Public Law 94-142 requires more than 180 days of free, appropriate education, but, under the constraints of court order, the State Board of Education will consider the individual facts of each case, and

DETERMINES AND ORDERS, that the student herein must be considered for admission to any available appropriate program operated by the DeKalb County Board of Education on the same basis as any other student would be admitted to the same program, and

DETERMINES AND ORDERS, that the decision of the regional hearing officer herein is hereby sustained to the extent it does not conflict with this decision.

Mr. Lathem dissented.

This 13th day of August, 1981.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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	:	CASE NO. 1981-23
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IN RE: DAVID L.	:	REPORT OF HEARING
	:	
	:	OFFICER
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PART I

SUMMARY OF APPEAL

This is an automatic appeal by the DeKalb County Board of Education (hereinafter "Local Board") from a decision by a regional hearing officer that the DeKalb County School System (hereinafter "Local System") needed to provide David L. (hereinafter "Student") with a summer program in addition to the special education program proposed by the Local System. The Local Board maintains there was no evidence to support the regional hearing officer's decision. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART I

FINDINGS OF FACT

The Student is a fifteen year old boy who has been diagnosed as being severely mentally retarded and autistic. At the time of the hearing before the regional hearing officer,

he was attending a private residential facility following placement by the Local System in 1980. A placement committee met in May, 1981 and recommended that for the 1981-1982 school year, the Student should be removed from the residential program and placed in a severely emotionally disturbed program operated by the Local System. The Student's parents objected to the change in placement and requested a hearing under the provisions of Public Law 94-142. The hearing before the regional hearing officer was held on June 30, 1981, and he issued his report on July 6, 1981. The regional hearing officer decided that the Student could receive an appropriate education within the Local System, provided the Student's individualized educational program was amended to provide for a summer program. The Local Board rejected the regional hearing officer's decision on July 13, 1981, because there was no evidence to support the decision that a summer program was necessary. The Student's parents also filed an appeal on July 22, 1981, but no grounds for the appeal were stated.

Among his findings of fact, the regional hearing officer found:

1. The Student is handicapped and in need of special education services as defined by Public Law 94-142.
2. The Student requires daily care and supervision, special education facilities and a summer program.

3. The Student can appropriately be served within the Local System and there was no evidence that the recommended severely emotionally disturbed program was inappropriate except that it did not have a summer component.

4. The Student needs a summer program in order to avoid regression.

The Student has continuously been in a residential program since age five. Until he transferred to the present private residential facility, he exhibited strong aggressive actions, could not relate with his peers, was unable to talk, inappropriately ran away, jumped into water, and could not be controlled at home. During the past year, he made considerable progress in the private residential facility and is able to speak in sentences, remain calm for extended periods of time, and has the ability to get along with his peers. He also is able to follow directions from adults. He, nevertheless, requires constant supervision.

The program proposed by the Local System is in a self-contained classroom with seven students and two teachers. The program is designed for severely mentally retarded and behavioral disordered children. The program is specifically designed for secondary age school children who are trainable or severely mentally retarded.

PART III

CONCLUSIONS OF LAW

The Local Board has appealed to the State Board of Education on the ground there was no evidence to support the decision of the regional hearing officer that the Student required a summer program component. The regional hearing officer based his decision on the fact the Student would regress during the summer months if he did not have educational services available, and the written reports which stressed the need for constant supervision. There was evidence before the regional hearing officer that regression would occur. The Student has continuously been in a year-round residential program since age five. Although he made significant progress during the year he was in the private residential facility, he exhibited regression during the three-week Christmas holidays. The Hearing Officer concludes that, based upon the testimony he received and the reports that were entered into the record, the regional hearing officer could conclude that the Student would regress during the summer months if he was not provided with a continuing special education program. The State Board of Education follows the rule that if there is any evidence to support the decision of the regional hearing officer, the decision will not be reversed upon appeal. See, Antone v. Greene County Board of Education, Case No. 1976-11; In re Steven M., Case No. 1980-38.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the records submitted, the Hearing Officer is of the opinion there was evidence before the regional hearing officer to support his decision that the Student required a summer program in order to avoid regression. The Hearing Officer therefore recommends that the decision of the regional hearing officer be sustained.

(Appearances: For parents - pro se; For Local System - Weekes, Candler, Sams & Weatherly; Charles Weatherly)



L.O. BUCKLAND
Hearing Officer