STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J.E.B.G. : CASE NO. 1981-27

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.

Mrs. Oberdorfer was not present.

This 8th day of October, 1981.

Thomas K. Vann Jr.

THOMAS K. VANN, JR., CHAIRMAN

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J.E.B.G.	:	CASE NO. 1981-27
	:	REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parent of J.E.B.G. (hereinafter "the Student") from a decision of a regional hearing officer, which was adopted by the Atlanta Board of Education (hereinafter "Local Board"), that the Student required private residential placement for only 180 days per year, and that the Student's parent had waived any appeal rights arising from the placement of the Student during the 1980-81 school year. The appeal was made on the grounds the evidence and the law did not support the decision of the regional hearing officer. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART II

FINDINGS OF FACT

The Student, who is presently fourteen (14) years of age, has been diagnosed as having an attention deficit disorder and a developmental language disorder. Early

diagnostic reports indicated that the Student might be autistic. The Student is presently attending a private residential facility located outside the State of Georgia. This appeal arose as a result of the preparation of an individualized educational plan in March, 1981, which, although it approved private residential placement, limited the duration of the services to 180 days. The Student's mother agreed with the placement, but disagreed with the length of the services. She contends that the Student requires year-around residential placement. A hearing before the regional hearing officer was conducted on July 15, 1981. The regional hearing officer issued his report on July 24, 1981, and the Local Board upheld the regional hearing officer's decision on August 24, 1981. The appeal to the State Board of Education was made on August 25, 1981.

In his report, the regional hearing officer found that the Atlanta Public School System (hereinafter "Local System") and the Student's parent both agreed on the private residential placement. He also found that there was no evidence to indicate that the Student requires more than 180 days of services. He also found that an individualized educational plan was prepared in May, 1980 for the 1980-81 school year, and that a placement made in September, 1980 was accepted by all the parties. The

Student's parent did not appeal from the decision made concerning the 1980-81 placement, and the regional hearing officer concluded that all appeal rights had been waived by failure to appeal within thirty (30) days after the decision was made. The regional hearing officer also decided that the Local System was not required to pay for incidental services rendered to the Student during an interim placement in a private facility located in Atlanta because it was not established that the incidental services were "related services" as defined within Public Law 94-142. Based upon all of the evidence, the regional hearing officer concluded that the most appropriate placement for the 1981-82 school year was in the private residential facility where the Student is presently located, but that he did not require educational services for more than 180 days.

PART III

CONCLUSIONS OF LAW

The Student's parent has appealed to the State Board of Education on the grounds that the evidence establishes that the Student requires year-around educational services, and the Local System is, therefore, required to pay for the services. In addition, the Student's parent maintains that the Local System did not prepare an individualized educational program for the Student in May,

1980, and she could not, therefore, waive any rights relating to a decision made at that time. She, therefore, contends that the Local System is required to pay for the services obtained by the Student at a private facility located in Atlanta during an interim placement while the Student was awaiting placement in the private residential facility in which he is presently located. The Student's parent contends that the regional hearing officer's finding that the Student is appropriately placed in a private residential facility which has a year-around program is inconsistent with his determination that the Student requires only 180 days of services. The parent argues that by placing the Student in the private residential program, the Local System made a determination that the Student required year-around services and, therefore, is obligated to pay for the services. The Student's parent has the same contention regarding the decision of the regional hearing officer in making a distinction between the placement and the length of placement.

In Georgia Association of Retarted Citizens v. McDaniel, (C.A 78-1950A, N.D. Ga., 1981), the Court stated that the burden of establishing the duration of the educational services to be provided to a student is on the school system. The individual needs of each child must

be reviewed and determined without reference to any arbitrary policies limiting the length of services. In the instant case, the regional hearing officer reviewed the evidence presented by both the Local System and the Student's parent. Based upon his review, the regional hearing officer concluded that the Student did not need services for more than 180 days. His determination was made without reference to any arbitrary policy of either the Local System or the State which limits the duration of services. The regional hearing officer reviewed the Student's history, the evidence regarding regression, and the evidence regarding the Student's placement.

The State Board of Education follows the policy that if there is any evidence to support the decision of a regional hearing officer, the decision will not be disturbed upon review. Antone v. Greene County Bd. of Ed., Case No. 1976-11. In the instant case, the evidence in support of the need for year-around services was contained in the affidavits and reports of psychologists and psychiatrists which made conclusory statements that the Student required year-around residential placement. The Local System introduced evidence that the Student's educational needs could be met in the Local System on a 180 day basis.

There was no evidence that the Student would regress if he was removed from the private residential facility for the summer months.[1] It appears that the Local System's determination that the Student required only 180 days of services was based upon a review of the Student's needs rather than upon any arbitrary policy which limited the amount of services a child would receive.

The Student's parent's argument that the Local System is required to pay for year-around services, because of the fact the Local System placed the Student in the private residential facility, is not pursuasive. Similary, the collateral argument that the regional hearing officer's decision is inconsistent, because he decided the private residential facility was the proper placement but that the Local System does not have to pay for year-around services, is also not pursuasive. The particular facility or program in which the placement is made does not control the duration

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[1]As pointed out by Judge Ward in Georgia Association of Retarded Citizens v. McDaniel, supra, the question of whether a student will regress if temporarily removed from the professional learning environment and placed in the home has not been settled. One side argues that the student regresses so much that the losses cannot be recouped. The other side maintains that the regression is very temporary and it is more important for the student to be faced with transferring skills learned in the sheltered environment to the natural environment. Judge Ward decided that the question of regression had to be separately determined for each student.

of the services to be provided. The duration of the services is initially controlled by the individualized educational program. If it was shown that the placement in the particular facility was made only because it had a twelve (12) month program, then the argument could be advanced that the Local System was required to pay for such a program. The residential component of the program, however, must also be considered as one of the needs of the Student which could have dictated the particular facility, but this requirement does not necessarily extend for the entire year. The nature of or type of services, rather than their duration, could be the determining factor in selecting a particular placement. The duration of the services, therefore, does not necessarily follow from the placement. The two factors, although considered together, are independent factors. The Hearing Officer, therefore, concludes that the determination that the particular residential placement is appropriate is not inconsistent with a determination that the Student does not require year-around services, nor does it impose a burden on the Local System to pay for year-around services.

The second issue raised by the appeal is whether the Student's parent waived any appeal rights arising from the placement for the 1980-81 school year. The regional hearing officer found that an individualized educational

program was prepared in May and June, 1980. The individualized program did not indicate where the services were to be provided, but they were to start in September, 1980. The Student was not placed until October, 1980, and then only in a temporary status. His present placement did not occur until January, 1981. The regional hearing officer found that the Student's parent did not appeal the 1980-81 placement decision until the present hearing. Public Law 94-142 requires an appeal to be made within thirty (30) days following the placement decision. A "placement" was made in October, 1980, and the present placement was made in January, 1981. In the instant case, an appeal was not made within thirty (30) days after the placement decisions and the Student's parent, therefore, has forfeited any appeal rights pertaining to the 1980-81 placement.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record presented, the Hearing Officer is of the opinion the evidence supports the decision of the regional hearing officer that the Student's placement in a private residential facility for 180 days will provide the Student with a free, appropriate public education, and that

the Student's parent forfeited any appeal rights pertaining to the 1980-81 placement. The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be sustained.

L. O. Buckland

L.O. BUCKLAND
Hearing Officer