

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: TIMOTHY G.

:
:
:

CASE NO. 1981-38

O R D E R

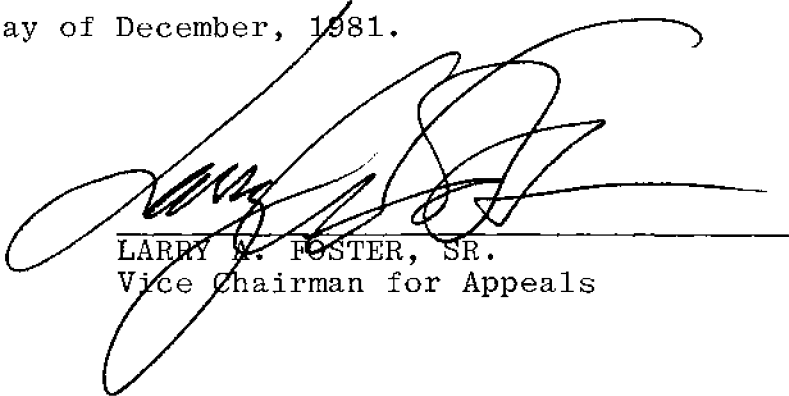
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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.

Messrs. Lathem and McClung were not present.

This 10th day of December, 1981.



LARRY W. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: TIMOTHY G.

:
:
:
:
:

CASE NO. 1981-38

REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This appeal was filed by the parents of Timothy G. (hereinafter "Student") from the decision of a regional hearing officer dismissing a request for a special education hearing on the grounds the Glynn County Board of Education (hereinafter "Local Board") did not have jurisdiction over the Student and the Glynn County School System (hereinafter "Local System") was not required to prepare an individualized educational program for the Student because the Student was ordered to a Youth Development Center by a Juvenile Court. The Hearing Officer recommends that the decision of the Regional Hearing Officer be sustained.

PART II

FINDINGS OF FACT

The Student was ordered to a youth development center by a juvenile court on August 31, 1981 after being adjudicated a delinquent on July 8, 1981. On August 28, 1981,

the Student's parents had requested a hearing to determine the Student's placement, and the Local System moved to dismiss the request for a hearing because jurisdiction over the Student was with the Department of Human Resources rather than the Local Board. The Regional Hearing Officer entered her order dismissing the hearing and the Local Board concurred. The appeal to the State Board of Education was then made on October 29, 1981.

PART III

CONCLUSIONS OF LAW

The appeal was made on the grounds that: (1) the Regional Hearing did not afford the parents due process because the decision dismissing the request for a hearing was entered without a hearing or opportunity for argument; (2) the Student's educational records were not made available to the Student's parents; (3) the Local System failed to comply with federal law because it did not prepare an I E.P., and (4) the Local System failed to provide the Student with an appropriate education. The parents argue that the Student was identified as a handicapped student and, since he was a resident of Glynn County, the Local System has the legal obligation of providing the Student with an education even if he is under the jurisdiction of the Department of Human Resources.

In support of their position, the Student's parents point to the provisions of the Cooperative Agreement between the Georgia Department of Human Resources, Division of Mental Health and Mental Retardation, and the Georgia Department of Education which provides:

"The primary responsibility for assuring that an Individualized Education Plan (IEP) has been developed for each client is with the local education agency in which the parent/guardian of the child resides. The responsibility for assuring that an IEP has been developed for those children whose custody is held by the Department of Family and Children Services or Youth Services, rests with the local education agency where the child resides." GEORGIA SPECIAL EDUCATION, State Program Plan, FY 81-83, p. A-110.

This particular agreement, however, is not applicable in the instant case because the Student is not under the control of the Division of Mental Health and Mental Retardation of the Department of Human Resources. The particular agreement which is applicable is the agreement between the Georgia Department of Education and the Division of Youth Services of the Georgia Department of Human Resources, Georgia Special Education, State Program Plan, FY 81-83, pp. A-112 - A-114. The introduction to this agreement specifically provides:

"The purpose of this agreement is to promote the development and maintenance of educational and related services programs for handicapped juvenile offenders confined to Youth Development Centers administered by the Department of Human Resources." Id. at A-112.

The agreement provides that the Department of Human Resources, Division of Youth Services, will develop the Individualized Education Program ("IEP") of the students under the jurisdiction of the Youth Services Division. Since the Student is under the jurisdiction of the Division of Youth Services of the Department of Human Resources, the Local System has neither jurisdiction over the Student nor the responsibility of preparing an IEP for the Student. The Hearing Officer, therefore, concludes that the Regional Hearing Officer properly dismissed the request for a hearing which was submitted to the Local System and which was requested for the purpose of reviewing the placement or program recommended by the Local System.

An IEP will need to be developed for the Student by the Department of Human Resources, Division of Youth Services, taking into consideration the changed circumstances. If there is disagreement over the IEP at that time, then a request for a hearing can be made to the Department of Human Resources. Because of the intervention of the Juvenile Court order, the request for a hearing which was ruled upon by the Regional Hearing Officer was premature.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the documents submitted, and the briefs of counsel, the Hearing Officer is of the opinion the Regional Hearing Officer properly

dismissed the request for a hearing as moot because of the intervention of the Juvenile Court order. The Hearing Officer, therefore, recommends that the decision of the Regional Hearing Officer be sustained.

L. O. Buckland
L.O. Buckland
Hearing Officer