

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JUL 11 1983

IN RE: ERIN P.

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CASE NO. 1983-4

DECISION OF STATE HEARING OFFICER

This is an appeal by the parents of Erin P. (hereinafter "Student") from a decision by a regional hearing officer that the special education placement proposed by the Fulton County Board of Education (hereinafter "Local Board") would provide a free, appropriate, public education. The Student's parents have challenged the regulations under which the proceedings before the regional hearing officer were held, the procedures followed, and the decision of the regional hearing officer. The State Hearing Officer affirms the decision of the regional hearing officer.

The Student, who is currently eleven years old, suffers from infantile autism. She has received special education services since her enrollment in school. In May, 1982, a placement committee was convened to review the Student's placement for the 1982-1983 school year. During the 1981-1982 school year, the Student was receiving one hour of daily learning disability resource instruction. The placement committee that met in May, 1982, recommended that the Student receive the same services as were provided during the 1981-1982 school year with the exception of the learning disabilities resource instruction.

The recommended placement was in a behavior disorder class with speech and language therapy provided for 30 minutes per day. The Student's parents agreed with the goals that were developed for the Student's individualized educational plan ("IEP"), but they disagreed with the discontinuance of the learning disabilities resource instruction.

An unsuccessful attempt was made by the Student's parents and the Fulton County School System (hereinafter "Local System") to mediate the differences and the parents requested a hearing before a regional hearing officer. When they made the request for a hearing, the parents also requested that the Student be provided with extended day services, extended year services, and recreational therapy. The hearing before the regional hearing officer was conducted on November 9, 1982, and December 1, 1982. The Regional Hearing Officer issued her decision on December 24, 1982.

During and after the hearing, the Student's parents challenged the state and federal regulations governing the conduct of special education hearings on the grounds they did not define which of the parties had the burden of proof, and they did not provide for a fair and impartial hearing because the Local System was permitted to select the regional hearing officer. During the hearing, the Student's parents contended that the Student required residential placement, learning disability services, recreational therapy, and extended day care.

The Regional Hearing Officer found that the program and the placement offered by the Local System would provide a free, appropriate, public education for the Student. The Regional Hearing Officer found that the Student was not eligible for learning disability services, but she concluded that the Local System would have to continue to provide learning disability services to the Student in order to avoid an abrupt withdrawal since the services had previously been provided. After an eight week period, the Student was to be re-evaluated to determine if the learning disability services should be increased or totally withdrawn. The Regional Hearing Officer also found that the Student did not require residential placement.

In response to particular challenges made by the Student's parents, the Regional Hearing Officer determined that:

1. The Local System had not unlawfully used an eligibility formula to determine whether learning disability resource services should be provided;
2. There was no evidence presented to show that the rules and regulations used by the State Department of Education were unlawfully enacted;
3. There was no unconstitutional defect in the process used for the selection of regional hearing officers; and
4. The failure to place the burden of proof on one party or the other did not violate due process.

The Student's parents appealed the decision of the Regional Hearing Officer. The Local System disagreed with the Regional Hearing Officer's decision that it was necessary to provide learning disabilities services, but the Local System did not

appeal the decision. The parents' appeal asks that the decision of the Regional Hearing Officer be reversed and a finding made that the program and placement offered by the Local System will not provide the Student with an appropriate public education. The appeal is based on the parents' contentions that the Regional Hearing Officer was factually and legally incorrect in her findings and conclusions because she determined that the Student needed learning disability and recreational therapy services, but that the Local System did not have to provide these services in order to have an appropriate educational program, and because she determined that the Student required socialization skills, personal interaction assistance, and a summer program, but did not find that the Local System had to provide these services. In addition, the parents complain that the Regional Hearing Officer failed to address all of the issues that were raised during the hearing and they request that these be addressed on appeal.

As pointed out by the Regional Hearing Officer, the central issue to be decided is whether the placement offered by the Local System will provide the Student with a free, appropriate public education. Although the evidence was in conflict, there was testimony and documentary evidence presented during the hearing which showed that the Student requires a self-contained situation where there is little outside distraction. She requires constant monitoring in order to keep her on task, and thus requires a significant amount of

individualized instruction. By placing her in a day program, there is a greater likelihood the Student will be able to generalize the skills she has learned so that she will be able to be more independent outside the closed environment. The program offered by the Local System provides for a self-contained environment with a significant amount of individualized instruction. The pupil-teacher ratio is approximately three to one and the teachers are thus able to directly monitor the Student's activities and redirect her when her attention requires redirection. There was evidence presented which showed that residential placement would be detrimental to the Student. Also, it does not appear that the Student requires services during the entire year. She has been able to recover from any regression sustained during periods when she was not in school, and she has been making progress while she has been enrolled in the day program. The Hearing Officer, therefore, concludes that the placement proposed by the Local System for the 1982-1983 school year will provide the Student with a free, appropriate public education.

The Student's parents' complaint that the state and federal regulations violate due process and their statutory guarantee of a fair and impartial hearing, because the regulations do not establish which party has the burden of proof, does not have to be considered in this appeal. The Local Board presented substantial evidence which showed that the placement offered would provide the Student with an appropriate education so that if the burden of proof was placed upon the Local System, it met that burden.

The Student's parents claim that the Local System illegally used a formula to exclude the Student from learning disability services, and that the Student suffers from a learning disability such that she should receive additional services other than those provided in the program offered by the Local System. The Regional Hearing Officer found, and there was evidence to support the finding, that the Local System did not solely use a formula to make its determination, but also took into consideration other factors. There was also evidence in the record which showed that the Student will receive at least as much in the way of services in the program offered by the Local System as she was receiving in the learning disability resource classes she was attending during the 1981-1982 school year. As pointed out by the Regional Hearing Officer, it is not clear from the record the extent of the individual services the Student was receiving in the learning disability classes she was attending, but it appears that the classes she will be attending in the program proposed by the Local System will provide her with at least as much individual, one-on-one instruction she was receiving. Any additional services provided in a different class would result in a duplication of services. The State Hearing Officer, therefore, concludes that the Local System did not violate any regulations, and the determination of whether the Student has a learning disability is immaterial since she will be receiving substantially the same, if not greater, individualized services as she would receive in a learning disabilities resource class.

The Student's parents contend that the Regional Hearing Officer erroneously decided that the Student required a summer program, but did not address the question of the length or type of summer program that should be provided. The Regional Hearing Officer, however, did not find that the Student was in need of a summer program. The State Hearing Officer, therefore, concludes that there was no need for the Regional Hearing Officer to address the question of the nature of a summer program for the Student.

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that there was sufficient evidence presented to support the decision of the Regional Hearing Officer, and there is no sustainable basis for reversing the decision. The decision of the Regional Hearing Officer is, therefore,

AFFIRMED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER