

## STATE OF GEORGIA

CASE NO. 1983-10

DECISION OF  
STATE HEARING OFFICER

A conference was held on May 25, 1982, by a committee to develop an individualized educational program for the Student. The committee included Local System personnel and Appellants. Appellants objected to the educational program recommended by the committee because it failed to contain provisions for providing the Student with learning disability resource services which the Student has previously been receiving.

Appellants requested a hearing in order to determine the appropriateness of the recommended educational program. Immediately prior to the hearing on the appropriateness of the recommended program, Appellants obtained three independent evaluations, at their own expense, which were presented into evidence at the hearing. After the hearing, Appellants requested reimbursement from the Local System for the expenses they incurred in obtaining the three independent evaluations. The Local System requested a second hearing in order to determine if the evaluations used in determining the Student's placement were correct, or if it was necessary to reimburse Appellants for the costs incurred. The second hearing was held on March 7, 1983, and the Regional Hearing Officer issued a decision on March 20, 1983. Appellants filed this appeal from the Regional Hearing Officer's decision on April 6, 1983.

The Regional Hearing Officer found that the Local System had made several evaluations of the Student and Appellants had not been informed about some of the evaluations. The evaluations were conducted by competent, qualified examiners who followed the professional guidelines. Conferences were held with Appellants concerning the results of some of the evaluations and Appellants did not raise any objections to the results of the evaluations. The evaluations were considered when the Student's individualized educational program was prepared, and Appellants did not express any objections to their use, their adequacy, or appropriateness.

Appellants were informed of the parental rights involved in special education proceedings, but they did not ask any questions. After the May 25, 1983, meeting, Appellants obtained their own evaluations without notifying the Local System they were dissatisfied with the evaluations obtained by the Local System.

The evaluations obtained by Appellants were completed on September 15, 1982, September 29, 1982, and November 9, 1982. Appellants first expressed dissatisfaction with the Local System's evaluations on October 13, 1982. They submitted their request for reimbursement on January 6, 1983.

The Regional Hearing Officer decided that the evaluations obtained and used by the Local System were appropriate and Appellants were not entitled to reimbursement under the appropriate federal and state regulations. With respect to the due process claims, the Regional Hearing Officer decided that the Local System had provided sufficient information to Appellants to enable them to know that they could request a hearing to show that the evaluations obtained by the Local System were inappropriate. The Regional Hearing Officer pointed to the federal regulations and decided there was no requirement included in the regulations for a school system to notify a handicapped student's parents each time an evaluation was performed. The regulations also do not require a school system to have a post-evaluation conference with the parents each time an evaluation is performed.

The Regional Hearing Officer also found that Appellants had received a listing of parental rights which pointed out that information about independent educational evaluations could be obtained upon request. Appellants, however, did not request any information on obtaining independent evaluations. The Regional Hearing Officer, therefore, concluded that Appellant's due process rights had not been violated by the Local System.

In their appeal, Appellants claim the Regional Hearing Officer made an error of law in concluding that independent evaluations had to be obtained before a meeting was conducted to decide the Student's placement or program. This claim is based on the absence of any timelines in the federal regulations concerning when parents may be reimbursed for independent evaluations they obtain.

Appellants also claim the Regional Hearing Officer erred in deciding that objections to the Local System's evaluations had to be made at or prior to the meeting where the Student's individual educational program was developed. Again, this claim is based on the absence of any regulations governing when objections are required. Appellants maintain that the Education for Handicapped Act, Public Law 94-142 is remedial in nature, and the intent of the legislation is thwarted by the Regional Hearing Officer's decision because the decision requires parents to obtain independent evaluations at a certain time, put the evaluations in a certain written format, and present them only within the timetable of the school system's calendar year.

Appellants also claim the Regional Hearing Officer erroneously decided that the evaluations obtained by the Local System were appropriate by erroneously finding that the results of the evaluations performed by the independent evaluators for Appellants were similar to the results obtained by the Local System's evaluators. Appellants point out that the evaluations were not the same because their evaluators made placement recommendations different from the Local System's evaluators. They claim the Regional Hearing Officer's failure to analyze the differences in the recommendations demands a reversal of the decision that the Local System's evaluations were appropriate.

Two questions are raised by this appeal: when will the evaluations of a local system be considered appropriate, and under what circumstances can parents obtain reimbursement for private evaluations they obtain? The federal and state regulations do not directly address the determination of appropriateness. They do, however, touch on the circumstances under which parents may obtain independent evaluations at public expense. 34 C.F.R. § 300.503 provides:

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with the evaluation obtained by the public agency. However, the public agency may initiate a hearing under § 300.506 of the sub-part to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.


As Appellants point out, this regulation does not provide for when the parent must disagree with the local system, and it does not define when an educational evaluation will be considered to be appropriate. The Regional Hearing Officer reasoned that, since the regulation provides that independent evaluations may be used in planning a student's program, it logically follows that the parents must make the local system aware of their dissatisfaction with the local system's evaluations, and the independent evaluations must be conducted prior to the meeting at which the student's educational program is established. The Regional Hearing Officer decided the Local System's evaluations were appropriate because they were conducted by competent, qualified professionals who followed professional standards.

In the instant case, the Local System showed that the evaluations performed by the Local System contained the professionally prescribed testing instruments indicated by the Student's abilities. The tests were administered by personnel who were qualified by training, experience, and credentials to administer such tests. As pointed out by the Regional Hearing Officer, the results of the evaluations performed by the Local System and the evaluations performed by Appellants were substantially the same. The only differences were in the recommendations made by the professionals as a result of the evaluations. There was no evidence to show that the evaluations obtained by the Local System were inappropriate. The fact that the professionals arrived at different conclusions as a result of the evaluations does

not establish that the evaluations were inappropriate. The Regional Hearing Officer was presented with evidence and opinions based upon the evidence. The only issue before the Regional Hearing Officer was whether the evaluations were appropriate, and there was evidence which supports the decision that they were appropriate. Questions regarding the opinions of the professionals, that is, whether the evaluations supported residential treatment or other placement, were not before the Regional Hearing Officer because these questions had previously been decided in the initial hearing regarding the placement of the student. The Regional Hearing Officer, therefore, properly did not address the differences in the recommendations made by the evaluators.

The federal regulations, 34 C.F.R. § 300.503, are quite specific that if the evaluation conducted by a local school system is found to be appropriate, then "the parent still has the right to an independent educational evaluation, but not at public expense." In the instant case, it is, therefore, immaterial whether the evaluations were obtained before or after the time when the Student's educational program was established. The determination that the evaluations obtained by the Local System were appropriate is conclusive in deciding that Appellants are not entitled to reimbursement for the evaluations they obtained. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer's decision concerning the timeliness of the evaluations is not a basis for reversal.

Based upon the foregoing findings and conclusions and the record presented, the State Hearing Officer is of the opinion that there was evidence before the Regional Hearing Officer which supports the decision that the evaluations obtained by the Local System were appropriate and that Appellants, therefore, are not entitled to reimbursement for the independently obtained evaluations.

  
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L. O. BUCKLAND,  
State Hearing Officer