

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DAPHNE D.)	
)	
v.)	CASE NO. 1983-13
)	
JONES COUNTY BOARD OF)	DECISION OF STATE
EDUCATION)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Daphne D. (hereinafter "Student") from a decision by a regional hearing officer that the Jones County School System (hereinafter "Local System") could provide an appropriate public education for the Student. The appeal was made on the basis the Regional Hearing Officer overlooked significant facts, and the evidence showed that the Local System could not provide the Student with the required services.

PART II

FINDINGS OF FACT

The Student, who is fifteen years of age, has a condition known as spina bifida. As a result, the lower portion of her body is paralyzed and she requires a wheelchair or a delicate bracing system in order to move around. She has had twenty-eight major operations and has been in the hospital more than one hundred times. Because of these frequent hospitalizations, she has been unable to attend school on any regular basis.

Although she is of eighth grade age, the Student's achievement scores place her at the fourth grade level. Her intelligence level is such that she should be achieving at the eighth grade level.

The Student's parents moved to Jones County at the beginning of the 1982-1983 school year and met with the personnel from the Local System to discuss the Student's needs. On October 19, 1982, a staffing committee meeting was held with one of the Student's parents and the committee developed an individualized educational program (IEP) for the Student. The IEP provided for the Student's attendance in the regular eighth grade classes with resource services for orthopedically handicapped and adaptive physical education. In addition, it was agreed that hospital homebound services would be provided as needed. The Student's parents provisionally agreed with the IEP on the condition the Local System conduct further evaluations of the Student. In addition, it was necessary to obtain a desk which could be used with a wheelchair and a table at which the Student could stand. Also, an area had to be provided for the Student to remove her braces and the lavatory facilities had to be changed in order for her to be able to use the facilities when she was in her wheelchair rather than in her braces.

The Student attended school for two days and then was absent because she developed a "pressure sore" as a result of falling before she began school. She underwent surgery in

order to alleviate part of the cause of the pressure sore which resulted from a metal pin which had been implanted to assist her. When she returned from the hospital, she was unable to attend school and the Local System began providing her with hospital homebound services. These services were scheduled for three hours per week, but more were provided. After two weeks, the Student refused to do any more of the work which was brought to her and she refused to work with the hospital homebound teacher. Her reason for not working with the hospital homebound teacher was because she claimed she was not receiving enough educational services from the Local System. In the meantime, the Local System changed the bus routing, and obtained approval to have its budget amended to provide for occupational therapy services, a computer, two typewriters and a desk. A request was also submitted to the regional services center for a complete evaluation of the Student. This request was denied, and the Local System began conducting its own evaluations. On the last day of school before the Christmas holidays, the Student engaged in a "strike" at the school where she complained that the Local System was not providing her with the services she required.

On December 14, 1982, the Student's parents requested a hearing before a regional hearing officer to determine if the services proposed to be provided by the Local System were adequate. The Local System continued with its evaluations of the Student and on January 10, 1983, another IEP meeting was held with the Student's parent. The IEP prepared at this meeting

provided for the Student to attend 60% of her regular classes and to receive resource services for orthopedic handicapped with learning disability services for mathematics. In addition, it was agreed that four hours per week of tutoring services would be provided to the Student when she was receiving hospital homebound services. There was also a provision for the Student to be evaluated by a physical therapist. A physical therapist performed a brief evaluation of the Student, and a third IEP meeting was held on January 26, 1983. The January 26, 1983 meeting did not change the January 10, 1983, IEP except to add physical therapy services.

At the time of the January 26, 1983, meeting, the Local System did not have a room where the Student could remove her braces, the school personnel had not been completely trained in how to move the Student, the physical therapy evaluation had not been completed, and the lavatory facilities had not been converted so the Student could use them when she was in her wheelchair. The Local System offered to have all of these deficiencies corrected before the Student returned to school.

A hearing was held before a regional hearing officer on March 2 and 3, 1983. The Regional Hearing Officer found that the Student's academic deficiencies were due to her sparse attendance and inconsistent schooling. In other schools she attended, the Student had fallen and been hurt as a result of the school personnel not knowing how to move her, or because the personnel could not recognize pressure sores. The Student's parents wanted a home communication system installed

so the Student could talk with her teachers while she was receiving hospital homebound services. In addition, the Student's parents wanted a computer installed in the home, additional hours of teaching, and more tutoring services, while the Student was receiving hospital homebound services.

The Student and her parents' primary concerns arose over the accessibility of the school building, fears that the school personnel were not adequately trained, and the Student was not scheduled to receive enough contact with a teacher while she was receiving hospital homebound services, even though it was acknowledged she would continue to require frequent hospital homebound services because of problems with pressure sores, the necessity of acclimating herself to her bracing system whenever there was a change, and because of sickness and other physical problems which arise because of her condition.

The Regional Hearing Officer found that the Local System had provided or agreed to provide all of the physical changes needed to accommodate the Student, that the teachers had undertaken inservice training on how to transfer the Student from her wheelchair, typewriters and computers had been obtained for additional instruction while the Student was receiving hospital homebound services, and physical therapy and adaptive physical education were available. The Regional Hearing Officer concluded that the program prepared by the Local System was appropriate for the Student's physical, academic and social needs in the least restrictive environment, and the staff of the Local System was capable of meeting the

Student's individual needs. The Regional Hearing Officer also concluded that the hospital homebound program, with four hours per week of additional tutoring, was adequate to meet the Student's needs when it was necessary for her to remain at home.

The Student's parents appealed the decision of the Regional Hearing Officer on April 27, 1983. The Local Board moved to dismiss the appeal as being untimely filed. The decision of the State Hearing Officer was delayed in order to permit the Student's parent time to respond to the motion to dismiss.

PART III

CONCLUSIONS OF LAW

On its cover sheet, the decision of the Regional Hearing Officer was dated March 25, 1983. The Regional Hearing Officer, however, did not sign the report until March 28, 1983. The appeal by the Student's parents, was, therefore, made within the thirty days required by the regulations and the Hearing Officer concludes that the appeal should not be dismissed.

The Student's parents' primary concern on appeal is that the Regional Hearing Officer overlooked the fact that the Local System had not provided facilities which would accommodate the Student, and the fact the staff was not trained, which presented the possibility the Student could be injured because of improper movements and the staff's inability to recognize pressure sores. The second issue is whether the Student can receive an adequate education with the level of

hospital homebound instruction proposed by the Local System when it is anticipated that the Student will require homebound instruction frequently. The final issue is whether the Student has a learning disability.

It is clear from the record that at the time the IEP was prepared, the physical facilities needed by the Student were not in place. The lavatory facilities had not been expanded so she could use them when she was in her wheelchair. They had been expanded to meet State standards for handicapped persons, but the standards are inadequate to meet the physical needs of the Student. In addition, a place and bed or other equipment for the removal of the Student's braces was not available. The staff of the school had not had any training on how to remove the Student from her wheelchair to a desk or to the floor. Even though they had training with another spina bifida student, they did not have an opportunity to receive any training in the actual movement of the Student. It is also clear from the record that the Local System was willing to provide all of the necessary physical changes required in order to meet the Student's needs, and the staff of the Local System was willing and able to take any necessary training in how to move the Student from one location to another. The Hearing Officer, therefore, concludes that, on the one hand, the Local System should immediately complete the physical facility modifications needed in order to accommodate the Student's needs, i.e., the lavatory facilities must be expanded, and a facility must be provided in order for the Student to

put on and remove her brace system. On the other hand, the Student's parents must permit the Local System to continue the in-service training on moving the Student from her wheelchair to a desk or to the floor and from a desk or the floor to her wheelchair, and training in how to recognize and deal with the pressure sores that may develop. Given the Student's parents' claim that the Student's needs are different from the needs of other spina bifida children, the Local System cannot provide any further staff training without the cooperation of the Student and the Student's parents.

The second issue is whether the hospital homebound services recommended by the Local System are adequate when considered in the light of the fact the Student will require hospital homebound services frequently because of illnesses, problems with her braces, and recovery periods from hospital visits which she must go through as a result of her condition. The Local System proposed a minimum of three hours per week of instruction from a hospital homebound teacher and four hours per week of tutoring during those periods when the Student was unable to attend school. The Student's parents suggested that the Local System should install a two-way communication system between the home and the school so the Student could hear the teachers, ask questions, and otherwise interact while the classes were being held. The Local System, however, maintained that three hours of instruction per week with four hours of tutoring was adequate to meet the Student's needs and the Regional Hearing Officer concurred. There was no evidence

presented during the hearing which indicates that the level of hospital homebound services offered will not be adequate to meet the Student's needs. The level of services has been established to provide a student with services comparable to what they would obtain if they were attending school. Although the Student is academically behind her peer age group because she has not been attending school, there is no indication she lacks the ability to learn and she can progress as well as any other student. The Hearing Officer, therefore, concludes that the level of hospital homebound services offered by the Local System will be adequate.

The final issue raised by the Student's parents was whether the Student should receive learning disability resource instruction in mathematics. The Student's parents maintain they do not want the Student to have the label of being learning disabled. It is clear from the record, however, that the Student requires remedial instruction in mathematics because she has not had the benefit of attending school on a consistent basis. Without the additional instruction, it will be difficult for the Student to recover the lost time she has suffered. Even though the Student may not have a learning disability, she qualifies for the additional services because of the discrepancy between her achievement level and her mental ability. Since the Local System has offered to provide the additional services in order to assist the Student in catching up to her peers, the Hearing Officer concludes that the Local System has offered an adequate program for the Student.

PART IV

DECISION

Based upon the record submitted and the foregoing findings and conclusions, the Hearing Officer is of the opinion the Local System had not completed the physical alterations necessary to accommodate the Student, and the staff had not received the necessary training on how to move the Student, but the services recommended by the Local System for hospital home-bound instruction and for remedial mathematics instruction were appropriate. The Local System, therefore, must complete the physical alterations required. The staff training must be continued in order for the staff to be able to assist the Student and be able to recognize pressure sores. The remainder of the services recommended by the Local System, however, are adequate and do not have to be changed in order to institute the Student's individualized educational program. The decision of the Regional Hearing Officer, therefore, is affirmed with the additional requirement that the Local System must make the alterations and provide the training set forth herein.



L. O. BUCKLAND
State Hearing Officer