

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: KIMBERLY W.)
) CASE NO. 1983-14
)
) DECISION OF STATE
) HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the Cobb County Board of Health (hereinafter "Board") from the decision of a regional hearing officer that the Board could not terminate services for Kimberly W. (hereinafter "Student") after a placement committee determined that the appropriate placement for the Student was in the South Cobb Training Center, which is operated by the Board under contract with the Department of Human Resources of the State of Georgia. The appeal was made on the grounds the Board is not subject to the provisions of The Education of All Handicapped Children Act, Public Law 94-142, 20 U.S.C. § 1401 (hereinafter "P.L. 94-142"), and the Regional Hearing Officer erroneously found that the proper placement of the Student was in the Training Center. The decision of the Regional Hearing Officer is affirmed.

PART II

FINDINGS OF FACT

The Student is profoundly mentally retarded, quadriplegic, and suffers from a seizure disorder. Although sixteen years

of age, the Student weighs only twenty-six pounds. She has been enrolled in the South Cobb County Training Center for seven years and was in the Training Center pursuant to an individualized educational program. In August, 1982, the Board decided that the Student could no longer be served by the Training Center because of their determination she required medical care which was not available at the Training Center. The Student's parents were notified to withdraw her immediately, but the parents requested a due process hearing before a Regional Hearing Officer. A hearing was conducted on March 11, 1983.

The Regional Hearing Officer found that the South Cobb Training Center is operated under the authority and control of the Board for the Georgia Department of Human Resources. An individualized education program was prepared on November 30, 1982, and it was recommended by the placement committee that the Student should remain in the Training Center as the appropriate placement. Both the Student's parents and the Cobb County School System agreed with the placement, but the Board did not agree because of its position the Training Center did not have the facilities or the staff necessary to meet the Student's needs. An alternative placement was considered in a school operated by the Cobb County School System, but the Training Center was recommended because the Student had been enrolled there for seven years and the placement committee determined that any change would be detrimental to the Student.

The Regional Hearing Officer found that the Student, who is non-communicative, has improved during the period of time she has been in the Training Center. The Student's tolerance of sudden changes in the environment has increased so that she no longer has seizures when such changes occur. The Student also has increased her food intake and her feeding skills have increased.

The Regional Hearing Officer decided that the long and short term goals set forth in the Student's individualized education program could be appropriately met in the Service Center and that the Service Center was an appropriate placement for the Student. The Regional Hearing Officer also decided that the Board was bound by the provisions of P.L. 94-142.

The decision of the Regional Hearing Officer was issued on April 14, 1983. The Board appealed the decision on May 11, 1983.

PART III

CONCLUSIONS OF LAW

The parties have set forth two issues to be decided: (1) whether the Board can be required by the Cobb County Board of Education to provide services for a school-aged child, and (2) whether the Regional Hearing Officer erred in finding that placement in the South Cobb Training Center was appropriate considering the Student's needs and the facility's limitations.

During the hearing before the Regional Hearing Officer, the Board maintained that the Student requires 24-hour residential care because of the need to have medical personnel available

to monitor her and the need for special equipment to assist in removing mucous from her system in order to avoid choking. The Board maintained that continued maintenance in the Training Center was life-threatening because of the lack of medical personnel. Testimony, however, was given by personnel from the Training Center, by the Student's parents, and by Cobb County School System personnel which indicated that the Student has progressed rather than regressed and a life-threatening situation does not exist. Competent medical evidence was presented in support of both sides of the question. There was, therefore, sufficient, competent evidence available to the Regional Hearing Officer which supported his decision that the Student should remain in the South Cobb Training Center, and that the placement was appropriate. On review, the findings of a regional hearing officer will not be disturbed if there is substantial evidence supporting the decision. The Hearing Officer, therefore, concludes that the South Cobb Training Center is an appropriate placement for the Student.

The Board argues that the Regional Hearing Officer erroneously decided that it was subject to the provisions of P.L. 94-142 and had to provide services to the Student under the provisions of Section 504 of the Vocational Rehabilitation Act of 1973, Public Law 93-112, 29 U.S.C. § 794. The Board maintains that P.L. 94-142 placed the responsibility of providing the Student with an appropriate education on the Cobb County Board of Education, and, since there is no interagency

agreement between the Board and the Cobb County Board of Education, the responsibility cannot be shifted to the Board. Since the Board has determined that it cannot provide the services, it maintains that the Cobb County Board of Education must undertake to provide the services and the Board cannot be forced to take the responsibility of providing services to the Student simply because a placement committee has determined that the Training Center is an appropriate placement.

Under the federal regulations promulgated pursuant to P.L. 94-142, the State Board of Education is responsible for insuring that all of the requirements of P.L. 94-142 and the federal regulations are met. 34 C.F.R. § 300.600(b). The regulations permit compliance through agreements with other agencies. See, 34 C.F.R. §§ 300.134, 300.301(a), 300.360(b). Pursuant to this authority, the Department of Education and the Department of Human Resources have entered into an agreement concerning the provision of special education services to the mentally handicapped. The agreement provides, in part, that the procedural safeguards followed by the Department of Education are applicable to the Department of Human Resources, and that the Department of Human Resources will provide services under the applicable federal and state rules and regulations.

Although, as argued by the Board, the Board is not directly controlled by the provisions of P.L. 94-142, the Board does operate the Training Center for the Department of Natural Resources and, consequently, the provisions of P.L. 94-142 are

applicable to the provision of services through the Training Center by virtue of the agreement between the Department of Education and the Department of Human Resources. From the testimony and evidence presented in the instant case, it appears that the Board is an agent of the Department of Human Resources in the operation of the Training Center. This arrangement would not abrogate the responsibilities of the Department of Human Resources under the agreement between the Department of Human Resources and the Department of Education. Since the agreement provides that all of the rules and regulations established under P.L. 94-142 are applicable, the right to a due process hearing and the provision of services in accordance with a properly prepared individualized education program follow.

The Board argues that it does not have to accept responsibility for a student if it determines that services cannot be provided in the Training Center. The agreement, however, between the Department of Human Resources and the Department of Education provides:

Upon reaching school age, clients of the local MR Service Center shall be referred to the ... [local school system]. If, through the 'individualized plan' process, the client is recommended for placement in the local MR Service Center and no break in service has occurred, the client shall remain in the local MR service center.

This provision directly addresses the argument raised by the Board. In the instant case, the Student has been in the Learning Center pursuant to an individualized education program and there


has not been a break in service. The placement committee recommended that the Student remain in the Learning Center. According to the above provision of the agreement between the Department of Human Resources and the Department of Education, the Student should remain in the Learning Center. The Hearing Officer, therefore, concludes that the Regional Hearing Officer correctly decided that the Learning Center was the proper placement for the Student notwithstanding the determination of the Board.

PART IV
DECISION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion the Cobb County Board of Health is bound to honor the determinations of a properly constituted placement committee that the South Cobb Learning Center is an appropriate placement for the Student, and that the evidence submitted to the Regional Hearing Officer supported his finding that the South Cobb Learning Center was an appropriate placement. The decision of the Regional Hearing Officer is, therefore,

AFFIRMED.

This 22d day of June, 1983.



L. O. BUCKLAND
Hearing Officer