

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: WESLEY B.)	
)	CASE NO. 1983-19
)	
AND)	
)	
)	
MURRAY COUNTY SCHOOL SYSTEM)	DECISION OF STATE HEARING OFFICER

This is an appeal by the parents of Wesley B. (hereinafter "Student") from the decision of a regional hearing officer that the Murray County School System (hereinafter "Local System") had a free, appropriate, public education available for the Student, that the Student could be moved from the private residential facility, where he is presently located, to the public school at the beginning of the 1983-1984 school year, and that the Local System had not shown bad faith in the preparation of the Student's individualized educational program ("IEP"). The appeal was made on the grounds the Local System cannot provide the services specified in the IEP, the IEP should have included occupational therapy as a service to be provided, the Regional Hearing Officer incorrectly applied the burden of proof, and the decision of the Regional Hearing Officer is not supported by substantial evidence.

The Student, who is now twelve years of age, is multi-handicapped and suffers from aphasia which is manifested by

receptive and expressive language difficulties. As a result, he requires constant repetition and example in a closely structured setting. He has been in a private residential school since 1979. In a previous appearance of this case, In Re: Wesley B., Case No. 1982-19, it was decided that the Student's needs could be met outside a residential setting, but the Student's placement could not be decided until an IEP had been prepared with consideration given to the amount of regression the Student would suffer if he was not offered an extended program.

A placement committee meeting was convened on January 18, 1983, to prepare an IEP. The Student's parents and the Local System could not agree on the Student's needs and another hearing before a regional hearing officer was requested by the Student's parents. The hearing was opened on March 1, 1983. It was continued to April 27, 1983, in order to receive additional evidence ordered by the Regional Hearing Officer.

The primary issues in the hearing before the Regional Hearing Officer were the extent of physical therapy and occupational therapy the Student needed, whether the Local System could provide the required physical and occupational therapy, and whether the Local System had acted in bad faith in preparing the Student's IEP. The Regional Hearing Officer found that the Local System had not completed the necessary evaluations when the January 18, 1983, placement committee meeting was held. The deficiency, however, arose because of the Local System's misunderstanding of its obligations regarding medical

evaluations. The deficiency was corrected when another placement committee meeting was held on April 27, 1983, immediately before the hearing was reconvened. The January 18, 1983, IEP was amended at the April 27, 1983 meeting. The Regional Hearing Officer found that the IEP was complete as amended and had been prepared by a multi-disciplinary team.

The goals and objectives set forth in the IEP were agreed upon by the parties. In order to meet the goals and objectives, the Local System proposed to provide the Student with five daily hours of self-contained language-based learning disabilities classwork, two and one-half hours weekly of adaptive physical education, two and one-half hours weekly of speech and language therapy, and one-half hour daily of physical therapy. The Local System proposed that the physical therapy would be provided by a licensed physical therapist on one day per week, and by the classroom teacher under the direction of the physical therapist for the remainder of the week. The Regional Hearing Officer found that the proposed services were adequate to meet the Student's needs because both physical and occupational therapy are related services provided to assist the Student in benefiting from special education and the Student had made educational progress without physical and occupational therapy.

The Regional Hearing Officer also found that the extended summer program proposed by the Local System was adequate to meet the Student's needs. Additionally, the Regional Hearing Officer found that the Local System could provide all of the

services required by the Student's IEP with competent, licensed personnel and an adequate budget.

The Regional Hearing Officer decided that the Local System had an appropriate public educational program available for the Student. The Regional Hearing Officer also decided that the Student's change in placement should not occur until the first day of the 1983-1984 school year in order to provide a smooth transition between a residential program and the public school program.

The Regional Hearing Officer's decision was issued on May 17, 1983. The Student's parents filed an appeal on June 15, 1983. The time for rendering the State decision was extended at the request of the Local System and agreement by counsel for the Student's parents.

The Student's parents maintain that the Regional Hearing Officer's decision was erroneous because the evidence shows that the Student requires a minimum of one-half hour per day of both physical therapy and occupational therapy, and that these services must be performed by therapists who are licensed in their respective fields. The parents then argue that, since the Local System does not have a licensed occupational therapist available and a licensed physical therapist will be available for only one-half hour per week, the Local System cannot provide the services required by the Student's IEP.

Under the provisions of 34 C.F.R. § 300.13, physical and occupational therapy are included within the term "related services", which is defined as supportive services "required to

assist a handicapped child to benefit from special education..." The Student's unique needs were considered when the Student's goals and objectives were identified. The Regional Hearing Officer received evidence of the methods to be used to meet the goals and objectives. There was testimony that the goals and objectives could be met entirely through the services of the physical therapist and an occupational therapist was not needed since the disciplines have several overlapping areas. The State Hearing Officer, therefore, concludes that the provision of one-half hour per day of physical therapy services will be appropriate to meet the goals and objectives set forth in the Student's IEP.

The Student's parents argue that the classroom teacher cannot provide physical therapy services because physical therapy is a regulated profession which requires the licensing of all who practice. This issue was raised before the Regional Hearing Officer and the Regional Hearing Officer declined to rule on whether services provided by a classroom teacher under the direction and guidance of a licensed physical therapist would comply with the IEP requirement to provide one-half hour per day of physical therapy. In the opinion of the Regional Hearing Officer, this question was one which had to be decided by compliance monitors. The State Hearing Officer similarly declines to decide whether a classroom teacher can provide physical therapy services under the direction and guidance of a licensed therapist. There is evidence in the record which supports the provision of physical therapy services by the

classroom teacher under the direction and guidance of a licensed physical therapist, and neither the federal or state regulations governing placement would prevent the use of non-licensed personnel to perform such services. It is the opinion of the State Hearing Officer that this is not the proper forum to invade the province of a state licensing board. If such a practice is prohibited, the Local System will have to provide direct services by a licensed physical therapist for the time the classroom teacher would have provided such services.

The Student's parents argue that the Local System's placement committee representative would only place in the Student's IEP those services which the Local System thought it could provide. As a result, the IEP does not completely reflect the Student's needs. Thus, even if there was agreement on the existing goals and objectives, the goals and objectives were incomplete because they did not contain all of the goals and objectives required for the Student. As an example, the Student's parents point out that there were evaluations available at the placement committee meeting which showed the need for occupational therapy, and there was evidence presented at the hearing before the Regional Hearing Officer of the need for occupational therapy.

The primary purpose of the hearing before the Regional Hearing Officer was to determine if the IEP was complete. Thus, even if the Local System's representative to the placement committee meeting prepared the IEP with only those goals and objectives which the Local System could meet, the subject

of the hearing was the adequacy of the IEP as it was prepared. Evidence was received concerning both the goals and objectives that were contained in the IEP and those which the Student's parents maintained had been omitted. It is, therefore, immaterial whether the Local System's representative did or did not limit the goals and objectives that were placed on the IEP. The Regional Hearing Officer had an opportunity to review all goals and objectives before deciding that the IEP was complete. The State Hearing Officer concludes that this argument does not form a basis for reversing the decision of the Regional Hearing Officer.

Based upon the foregoing findings and conclusions, the record submitted, and the briefs of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer is supported by the evidence presented and there is no basis for reversal. The decision of the Regional Hearing Officer is, therefore,

AFFIRMED.



L. O. BUCKLAND
State Hearing Officer

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JEAN BALTHROP

Appellant

v.

THE BOARD OF PUBLIC EDUCATION
FOR THE CITY OF SAVANNAH AND
THE COUNTY OF CHATHAM

Appellee.

CASE NO. 1983-20

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 Chatham County Board of Education herein appealed from is hereby reversed.

Mr. Temples was not present. Mr. Owens, Mr. Taylor and Mr. Lathem were opposed.

The State Board of Education additionally concludes that a local board of education is bound only by those Findings of Fact made by a hearing tribunal which are supported by the direct evidence contained in the record of the hearing. A local board is not bound by either Findings of Fact which are not supported by the record, or by any conclusions made from the facts by the hearing tribunal.

This 8th day of September, 1983.

Larry A. Foster, Sr. (EB)

LARRY A. FOSTER, SR.
Vice Chairman for Appeals