STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: MATTHEW F.	)	
	)	CASE NO. 1983-21
AND	)	
	)	
DEKALB COUNTY BOARD OF EDUCATION	)	DECISION OF STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by the parents of Matthew F. (hereinafter "Student") from the decision of a regional hearing officer that the DeKalb County School System (hereinafter "Local System") could provide the Student with an appropriate public education, and that the Student's parents could not receive reimbursement of the costs they incurred as a result of admitting the Student into a private psychiatric hospital. The State Hearing Officer affirms the decision of the Regional Hearing Officer except for that portion of the decision which held that the Student's parents unilaterally sought a medical evaluation at an intermediate facility.

PART II

FINDINGS OF FACT

The Student, who is presently seven years of age, is multiply handicapped and has received special education services from the Local System since he was one year of age. He is presently in a private psychiatric hospital.

During the spring of 1982, an individualized educational program ("IEP") was prepared for the Student. The IEP provided for the Student to be enrolled in the Local System's developmental learning class during the first grade. In June, 1982, the Student had an operation, his tenth, and his behavior deteriorated during the remainder of the summer. The Student's mother expressed concern to the Local System that the developmental learning class would not be appropriate for the Student. The Local System personnel, however, did not believe the Student should be placed into a behavior disorders program because they felt the Student would be able to adjust in the developmental learning class. Additionally, they felt the behavior disorders class would be too advanced for the Student and it was not designed for students who had multiple handicaps. Another factor which impacted on all decisions was that the Student was taking several medications.

When school began in the fall of 1982, the Student's behavior continued to deteriorate and it became evident that the placement in the developmental learning class was inappropriate. Initially, the Local System personnel felt the Student would adjust because he had previously displayed problems with initial adjustment to new classes. By October, 1982, however, there was enough concern that discussions were held concerning the need for changing the Student's placement. The Local System was informed that the Student's medication had been changed, so a decision was made to delay any changes until the effects

of the altered medication could be determined. The medication changes, however, did not have a positive effect, and a decision was made to hold a meeting on November 2, 1982, to discuss changing the Student's placement. In the meantime, Local System personnel discussed with the Student's parents that a medical evaluation should be obtained. The parents consented, and the Local System personnel secured the necessary forms to have the Student admitted to the Georgia Mental Health Institute and made arrangements for the Student's parents to meet with Georgia Mental Health Institute personnel. On October 29, 1982, the Student was admitted to the Georgia Mental Health Institute.

Upon his admission, the Student was given an overdose of a drug and he was rushed to Henrietta Egleston Hospital, where he remained for one day. The Student's parents then withdrew him from the Georgia Mental Health Institute and took him to a private psychiatrist. The private psychiatrist conducted an examination, investigated the drug overdose, and recommended that the Student be admitted to a private psychiatric hospital in order to treat his behavior disorder. The Student's parents agreed with the recommendation and admitted him to the hospital.

The Student's parents then sought reimbursement from the Local System for the costs incurred in the private psychiatric hospital. A hearing before a regional hearing officer was scheduled for and held on March 10 and 11, 1983. Before the hearing, another IEP was prepared and it was recommended that the Student receive special education services in the behavior disorders program at the Sexton Woods School. During the

hearing, the Local System presented evidence concerning the appropriateness of the behavior disorders program at the Sexton Woods School. The Regional Hearing Officer issued his decision on May 18, 1983.

The Regional Hearing Officer found that the Student's parents had unilaterally enrolled him in the Georgia Mental Health Institute and in the private psychiatric hospital. He also found that the behavior disorders program at the Sexton Woods School was appropriate for the Student. Since an appropriate program was available for the Student and since the Student's parents had unilaterally admitted him to the Georgia Mental Health Institute and the private psychiatric hospital, the Regional Hearing Officer decided that the Student's parents could not recover reimbursement for the expenses they had incurred, and the Local System was not responsible for providing the Student with the services of the private psychiatric hospital.

Before the decision of the Regional Hearing Officer was issued, the Student's parents filed a civil action in court requesting reimbursement of their expenses. They then filed an appeal to the State on June 17, 1983.

PART III

CONCLUSIONS OF LAW

The appeal was made on the grounds (1) the Regional Hearing Officer erred in fact and in law in deciding that the Student's parents could not receive reimbursement for the expenses they incurred as a result of the Student being in the

private facility, and (2) the contentions of the Student's parents should be sustained because the decision of the Regional Hearing Officer was not made within the prescribed timelines.

The Regional Hearing Officer found that the Student's parents had unilaterally removed him from the Local School System and placed him in the Georgia Mental Health Institute, in Henrietta Egleston Hospital, and in the private psychiatric facility. Under the rationale and holding in Stemple v. Board of Education of Prince George's County, 623 F.2d 893 (4th Cir., 1980), the Regional Hearing Officer held that the parents could not obtain reimbursement because of their unilateral withdrawal of the Student from the Local School System. The Student's parents argue that placement of the Student in the Georgia Mental Health Institute and eventually in the private psychiatric hospital was not unilateral, but was done on the recommendation of the Local School System, was done for the purpose of evaluation, and was done because of the failure of the Local System to provide an adequate educational program for the Student. The parents argue that Stemple is not applicable under these circumstances, that the Georgia Special Education State Program Plan provides for reimbursement of private facility costs, and the federal regulations permit reimbursement of evaluation costs. The Local School System argued that the services provided at the Georgia Mental Health Institute were to be medical evaluations rather than educational evaluations, and the subsequent enrollment in the private psychiatric facility

was unilateral by the Student's parents, and the parents are, therefore, precluded from obtaining any reimbursement.

The federal regulations, 34 C.F.R § 300.13, provide that a student will be offered "related services" in connection with providing special education, including "medical services for diagnostic or evaluation purposes." "Medical services" are further defined to mean:

> services provided by a licensed physician to determine a child's medically related handicapping condition which results in the child's need for special education and related services.

The Georgia Special Education State Program Plan, FY 81-83, Part XII, Section C, provides:

> If a parent contends that he or she has been forced, at the parent's own expense, to seek private schooling for the child in a private facility eligible to receive funds ... because an appropriate program does not exist, and the responsible local education agency disagrees, that disagreement and the question of who remains financially responsible shall be the subject of a procedural due process hearing ...

Under these guidelines, if, as argued by the Student's parents, they either did not unilaterally place the Student, or they were forced to place the Student in the private facility, then it is important to determine if (1) an appropriate program does not exist, and (2) if the services provided at the Georgia Mental Health Institute and at the private psychiatric hospital are for the purpose of determining the Student's medically handicapping condition which requires the provision of special education services. Stemple v. Board of Education provides that a parent

cannot obtain reimbursement if there has been a unilateral placement. The Georgia Special Education State Program Plan provides for payment if there has been a unilateral placement only if an appropriate program was not available when the placement was made. In any event, payment can only be made for "related services," and if the private psychiatric facility does not constitute a related service, then payment or reimbursement is inappropriate.

The Regional Hearing Officer found that the placement of the Student in the Georgia Mental Health Institute by the Student's parents was unilateral. The record, however, does not support the Regional Hearing Officer's finding. The Student's parents did not take any action without the recommendation of the Local System, and the Local System provided the forms and information necessary for the Student to be admitted to the Georgia Mental Health Institute. There was no indication that the Student's parents even considered the Georgia Mental Health Institute except upon the urging of the Local System. The signing of the admittance documents by the Student's mother does not establish that he was unilaterally admitted by the parents.

The Local System personnel testified that the Student was referred to the Georgia Mental Health Institute for the purpose of obtaining a "medical" evaluation in order to stabilize the Student's medications. The Local System personnel were concerned whether the Student's medications were proper before any changes were made in his placement. They wanted to

eliminate any medical concerns as the cause of his behavior. These reasons fall directly within the language of 34 C.F.R. § 300.13, i.e., the services to be provided were to determine the Student's medically handicapping condition, if one existed. The State Hearing Officer, therefore, concludes that the initial services provided at the Georgia Mental Health Institute were a "related service" and the responsibility of the Local System.

The State Hearing Officer, however, also concludes that the services provided at the private psychiatric hospital do not constitute a "related service" and the Student's removal to the private facility was done unilaterally by the Student's parents. The Student's admission into the private psychiatric hospital was not done for the purpose of determining the Student's medical condition that gave rise to the need for special education services. The admitting doctor made an evaluation and determined that the Student required hospitalization in order to provide him with medical services. Unquestionably, further medical evaluations were made and continue to be made while the Student is in the hospital, but these evaluations are for the purpose of controlling the medical problems; they are not for the purpose of identifying the medical problems in order for a special education program to be developed. The Local System, therefore, is not responsible for providing the services needed by the Student in the private hospital.

The Student's parents would have justifiably been angered and fearful when they learned he had received a drug overdose upon admission to the Georgia Mental Health Institute. But,

even justifiable anger and fear do not transform the Local System's responsibility for providing an evaluation to one of providing for hospitalization at a hospital selected by the parents. The parents are as bound by the requirements for following the same procedural route as the Local System has to follow. If they did not desire the evaluation to be performed at the Georgia Mental Health Institute, they could have requested evaluation at another facility, or under different circumstances. If the Local System did not provide an alternate facility, the parents could then request a hearing on the issue of the selection of an evaluating facility. They chose, instead, to remove the Student to another facility without any reference or input by the Local System. The State Hearing Officer concludes that the rationale of Stemple v. Board of Education is, therefore, applicable in the instant case, and the Local System is not responsible for the services provided in the private psychiatric hospital even if they were considered to be related services.

The Georgia Special Education State Program Plan also provides for payment of residential services if the local system does not have an adequate program available for a student. In the instant case, the Regional Hearing Officer concluded that the Local System had an appropriate educational program available for the Student. The Student's parents point out that the educational program at Sexton Woods was not presented until the hearing before the Regional Hearing Officer. Based upon this fact, and the fact that the Student had problems while

enrolled in the program initially prepared for the school year, the Student's parents argue that an adequate program was not available when the Student was enrolled in the private psychiatric hospital. The failure of the initial program and the lack of substitute plan, however, fails to establish that the Local System could not provide the Student with an appropriate educational program.

The Student's initial placement was properly made based upon the information available at the time the Student's program was prepared. The Student had previously exhibited problems in adjusting to new situations. With this history, the Local System could properly conclude that the Student would adjust in spite of the concerns expressed by his mother. The Local System also could conclude that the changes in the Student's medication would result in changed behavior. When the Student was admitted to the Georgia Mental Health Institute, the Local System had set in motion the procedures for obtaining a change in the Student's placement. These facts fail to establish that the Local System did not have an adequate program available for the Student. They show, instead, that the Local System was exercising care and caution in order to avoid unwarranted, precipitous changes.

A second facet of the situation, and of the Student's parent's argument, concerns the presentation and determination of the appropriateness of the placement at Sexton Woods during the hearing before the Regional Hearing Officer. Under the provisions of the Georgia Special Education State Program Plan,

a local system can raise the question of whether it can provide an appropriate program if a parent has placed a student into a private facility and has requested reimbursement from the local system for the costs of the facility. Georgia Special Education State Program Plan, FY 81-83, Part XII, Section C. It was, therefore, proper for the Regional Hearing Officer to receive evidence concerning the Sexton Woods program and to make a determination on the appropriateness of the program.

The final issue for determination is whether the Student's parents should be compensated for the private hospital costs because the Regional Hearing Officer did not render an opinion within the prescribed timelines after the hearing. The parents argue, without citing any authority, that the placement selected by them, as well as all of their contentions, should be accepted because the Regional Hearing Officer's decision was not made within the prescribed timelines. A second argument advanced by the parents is that since a civil action has been filed with the Court, the State Hearing Officer should not render a decision. The State Hearing Officer, however, is unaware of any authority on the part of a state hearing officer to impose any sanctions because of a regional hearing officer's delay in rendering a decision. The federal regulations also do not address the question of the status of an appeal when the matter has also been filed in civil court. 34 C.F.R. § 300.511 provides that a civil action can be filed if (1) the right to appeal to the state does not exist, and if (2) the decision of the state hearing officer aggrieves the party. Since neither

of these conditions existed at the time the civil action was filed in the instant case, the civil action arguably was filed prematurely. The State Hearing Officer, therefore, concludes that this appeal should not be dismissed, and that sanctions cannot be imposed by the State Hearing Officer.

PART IV

DECISION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs filed, the State Hearing Officer is of the opinion that the Student's parents did not unilaterally enroll the Student in the Georgia Mental Health Institute and that the Local System is responsible for the costs of medical evaluation performed at the Georgia Mental Health Institute. The parents, however, unilaterally enrolled the Student in the private psychiatric hospital and the services provided at the private psychiatric hospital do not constitute "related services" necessary for providing the Student with special education. The Local System, therefore, does not have to reimburse the Student's parents for the costs of the private psychiatric hospital. The Local System also can provide, and could provide, the Student with an appropriate public education, or provide the Student with educational services while he is enrolled in the private hospital facility.

The decision of the Regional Hearing Officer, with the exception of the determination regarding unilateral enrollment in the Georgia Mental Health Institute, is, therefore,

AFFIRMED.

This 20th day of July, 1983.

L. O. Buckland

L. O. BUCKLAND
State Hearing Officer