

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: KRISTEN A.)	
)	CASE NO. 1983-23
and)	
)	
FULTON COUNTY)	DECISION OF STATE
BOARD OF EDUCATION)	HEARING OFFICER

This is an appeal by the Fulton County Board of Education (hereinafter "Local Board") from a decision by a regional hearing officer that a free, appropriate public educational program was not available within the Fulton County Public Schools (hereinafter "Local System") for Kristen A. (hereinafter "Student"), and that the Local System was responsible for paying the costs of residential care for the Student in a private hospital facility. The Student had been transferred to the private facility by her parents before they sought any special education services. The appeal is based upon the Local Board's contentions that the Regional Hearing Officer made erroneous determinations of fact which are not supported by the record, and that the Regional Hearing Officer was incorrect, as a matter of law, in deciding that the Local System had to pay the costs of the Student's private residential treatment when she had been unilaterally placed in the private facility by her parents.

The Student is seventeen years old and has been identified as emotionally disturbed. Her parents noted behavioral problems

while she was in the eighth grade. Her behavior at home continued to deteriorate, and during her ninth grade year, she attempted suicide by taking an overdose of controlled and uncontrolled substances. She was admitted to a psychiatric hospital for a short stay and then released for outpatient treatment by a psychiatrist. The Student tested in the superior range of intelligence and was able to maintain "A" and "B" grades while working at grade level in the regular school classes. Her teachers did not note any unusual behavior while the Student was in school and a referral for special education services was never made by the Local System.

In December, 1981, the Student became intoxicated and attempted to jump from a moving car. She was again admitted to a hospital for psychiatric observation, and, shortly after her discharge, her parents enrolled her in a private residential psychiatric treatment facility. The Student's parents informed the Local System of the placement, but they did not request any special education services. In August, 1982, the Student's parents requested financial assistance from the Local System for the residential treatment. Procedures were started to evaluate the Student and conduct a staffing to determine if the Local System had an appropriate program available for the Student. After a series of delays, which were attributable to both the Student's parents and to the Local System, a placement committee was convened on March 17, 1983. The placement committee recommended placing the Student in the Alpha Program, a self-contained, behavior disorders day program located in

one of the high schools. The Student's parents rejected the proposed placement and requested a hearing before a regional hearing officer. The hearing was conducted on April 19, 27, and 28, 1983, and the Regional Hearing Officer rendered his decision on June 27, 1983.

The Regional Hearing Officer found that the Student was potentially suicidal and required constant supervision. He also found that the Local System did not have sufficient information concerning the suicide risk when the IEP was prepared. Because of the risk, the Regional Hearing Officer decided that the educational program proposed by the Local System was inappropriate because the Student required 24-hour, 365-days-per-year residential treatment. He also decided the Local System was required to pay the residential treatment costs beginning in August, 1982, when the Student's parents first requested assistance. The Local System's appeal from the Regional Hearing Officer's decision was filed on July 26, 1983.

The Local System raised four questions in its appeal:

1. Did the Regional Hearing Officer err in deciding that the Alpha Program was an inappropriate placement for the Student?
2. Did the Regional Hearing Officer err in holding that full-time residential institutionalization was required in order to provide the Student with a free appropriate public education, even though the Student could receive substantial educational benefits from the Alpha Program?
3. Did the Regional Hearing Officer err by basing his decision on evidence of past behavior when the evidence showed that the Student presently does not exhibit self-destructive behavior?

4. Did the Regional Hearing Officer err in deciding the Local System was responsible for paying the costs of private residential care when the Student's parents unilaterally placed the Student in the private facility, and, if so, did the Regional Hearing Officer err in deciding the Local System was responsible for paying the costs of the private facility without also finding that the private facility constituted an appropriate educational placement for the Student?

The primary issue to be decided in any case brought under the provisions of The Education for All Handicapped Children Act of 1975 ("Act"), 20 U.S.C. § 1401 et seq., is whether, under the applicable federal and state regulations, the local system is providing a free, appropriate, public education. Specifically, in the instant case, the issue is whether the Alpha Program proposed by the Local System will provide the Student with a free, appropriate public education in the least restrictive environment. Under the applicable regulations, a student's individualized educational program ("IEP") is the document which controls the placement of the student. The determination of the standards that must be met in preparing an IEP and in providing a free, appropriate public education has been addressed by the U. S. Supreme Court in the case of Hendrick Hudson Dist. Bd. of Ed. v. Rowley, _____ U.S. _____, 73 L.Ed.2d 690, 102 S.Ct. _____ (1982). In Rowley, the Supreme Court stated that, under the Act, if a local school system provided a student with personalized instruction and supportive services to permit the student to benefit from the instruction, then the student was receiving a free appropriate public education. The Court then went on to hold that a local system

satisfied the requirement of providing a free appropriate public education

... by providing personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction. Such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's IEP. In addition, the IEP, and therefore the personalized instruction, should be formulated in accordance with the requirements of the Act and, if the child is being educated in the regular classrooms of the public education system, should be reasonably calculated to enable the child to achieve passing marks and advance from grade to grade. Id., at _____ U.S. ____, 73 L.Ed.2d 710.

Under the specific facts of the case, the Court held that the school system was not required to provide an interpreter for a deaf child who was able to maintain passing grades and to advance from grade to grade without the interpreter. The Court also said that a local system does not have to provide maximum services or the best available services.

It has previously been decided that if a student has the ability to learn, in spite of medical or physical handicaps, the local system is not required to provide services which are addressed solely to the medical problems. See, In re Victor B., Case No. 1981-1; In re Richard H., Case No. 1980-28. The Act does not require a local system to act as a guarantor that a student will be risk free, nor does it require a local system to treat the medical problems of a student. However, the

medical problems have to be taken into account to the extent they actively interfere with the learning process.

In the instant case, the Student's IEP contains long-term goals to (1) successfully participate in class structure and routine, (2) improve socialization skills, and (3) enhance self-concept. The short-term goals relate primarily with an ability to achieve an awareness of her thoughts, the consequences of her actions, and the ability to redirect her behavior into socially acceptable patterns. These goals were agreed to by the parties.

The Alpha Program offered by the Local System provides a controlled, structured environment within a high school. The student-teacher ratio is low and the emphasis is on providing the enrolled students with educational programming. All of the enrolled students are emotionally disturbed. Group therapy is provided for the students, and psychological and psychiatric services are available. The students have an opportunity to relate with non-handicapped students in the school and can attend classes with non-handicapped students after they have reached an acceptable level of performance. The program will provide the Student with personalized instruction and support services designed to permit her to achieve passing marks and advance from grade to grade.

The Regional Hearing Officer decided that the Alpha Program was inappropriate. His decision was based upon his finding that the Student presented a substantial risk of committing suicide, and his conclusion that the Alpha Program failed to

provide for the Student's physical survival. His conclusion was based upon testimony that there was some risk that the Student would again exhibit suicidal tendencies if she returned to a day program, even though she presently did not exhibit such tendencies and suicide prevention was not a part of her present program. The Regional Hearing Officer's conclusion that a residential program was necessary was based solely on his finding that the Student presented a suicide risk rather than because the Student would be unable to learn in the Alpha Program. The Student's parents argued that her emotional state was inextricably connected with her ability to learn, and the Regional Hearing Officer stated:

I fully realize that in SED cases the warp and woof of the emotional, social and educational threads is next to impossible to separate and that there exists multiple therapy models for SED.

In support of this argument, the Student's parents point out that her grades were lower than expected, and that she was unable to learn while she was hospitalized as a result of her suicide attempts. A finding that the Student is a suicide risk, however, is not determinative whether the Alpha Program is an appropriate program for the Student.

The Student's behavioral problems did not prevent her from learning during the period when she was exhibiting her greatest difficulties, even though she was in a regular classroom and was not receiving any special educational benefits. The Student's inability to learn while in a hospital would not arise from the content of the Alpha Program; the Student

would be unable to learn in any program if she were in a hospital recovering from a suicide attempt.

As indicated, the Student's emotional problems have to be taken into consideration to the extent they prevent her from learning, but the Local System is not required to provide a program which is addressed solely to the medical problem. The Alpha Program offered by the Local System takes into account the medical problems to the extent they interfere directly with the Student's ability to learn. The goals set forth in the Student's IEP can be met in the Alpha Program, and the Student will be receiving personalized instruction reasonably calculated to enable her to achieve passing marks and advance from grade to grade. These are the factors which the Rowley case sets forth as the floor of services required to be provided by a local system.

Another major consideration in determining the appropriateness of a program is the intent of Congress to move students into the least restrictive environment. In the continuum of available services, a residential program represents the most restrictive environment. The Alpha Program represents the least restrictive environment for the Student at this time. As argued by the Local Board, a local school system would be unable to sustain placement of a student in the most restrictive environment based solely on the fact that the student presents a risk of exhibiting suicidal tendencies without any present indications the student is exhibiting such traits.

The State Hearing Officer, therefore, concludes that the Regional Hearing Officer erred in deciding that the Local System did not have a free appropriate public education available for the Student solely because 24-hour monitoring of the Student to prevent her from committing suicide was nonexistent in the Alpha Program, and also concludes that the Local System has a free, appropriate public education available for the Student.

The foregoing decision pretermits the need to discuss the question of contribution by the Local System for the Student's private residential care. The State Hearing Officer notes, however, that the Student's last educational placement was in a regular classroom. There has not been any determination that the Student's private residential program constitutes an appropriate program for the Student. In the absence of such a determination, or a determination that the residential program could meet the needs of the Student as set forth in the Student's IEP, the Local System would be unable to make any payments.

The decision of the Regional Hearing Officer is, therefore, REVERSED.

This 16th day of September, 1983.



L. O. BUCKLAND
State Hearing Officer

[Appearances: For parents - Mary Margaret Oliver; Howard & Gilliland, Decatur; For Local System - Tom Cox; Sutherland, Asbill & Brennan, Atlanta]