

Trial	Control	MCI	AD
1	85	75	65
2	88	78	68
3	90	80	70
4	92	82	72
5	95	85	75

IN RE: SAMUEL R. )  
and ) CASE NO. 1983-35  
ATLANTA CITY BOARD OF EDUCATION ) DECISION OF STATE  
HEARING OFFICER )

This is an appeal by the parent of Samuel R. (hereinafter "Student") from a decision by a regional hearing officer that the Atlanta Public School System (hereinafter "Local System") should conduct an evaluation of the Student in order to determine the primary area of exceptionality in preparation for completion of an individualized education program for the Student. The decision of the Regional Hearing Officer is sustained.

The Student, who is presently fifteen years of age, has above-average ability but has been performing below grade-level. The Student's parent requested a hearing because of a disagreement with the Local System concerning a change in placement. On May 5, 1983, a placement committee convened to prepare an individualized education program ("IEP") for the Student, but the IEP was not completed. A request for a hearing was made on May 17, 1983. The hearing was postponed by the parties until August 3, 1983. At the beginning of the hearing, the Regional Hearing Officer determined that a valid IEP had not been prepared. The hearing was recessed and the parties were ordered to prepare an IEP before the hearing was continued. Because the parties could not agree on the primary area of

exceptionality, the Local System requested an evaluation of the Student, but the Student's mother refused to permit further evaluation. The Local System then requested a hearing on the question of whether further evaluations should be undertaken before preparation of an IEP. The hearing was conducted on September 9, 1983. The Regional Hearing Officer issued his decision on September 28, 1983, and the Student's parent appealed the decision on October 27, 1983.

The Regional Hearing Officer found that the Student's classroom achievement was less than his ability expectation based upon standardized tests. The Student has had difficulty in accomplishing his classwork, but does have the ability to communicate at an above-average level. Based upon the record submitted, the Regional Hearing Officer concluded that the evidence was sufficient to establish that the Student should be evaluated to determine whether learning disability is his primary exceptionality.

Under the provisions of the federal regulations adopted to implement the Education for all Handicapped Children Act of 1975 (Public Law 94-142), if state law requires parental permission before a child may be evaluated, a local school system can request a hearing "to determine if the child may be evaluated... without parental consent." 34 CFR 300.504(c). The regulations further provide:

If the hearing officer upholds the ...  
[local school system], the [local  
school system] may evaluate ... with-  
out the parent's consent ..." 34 CFR  
300.504(c)(2)(ii).

The Student has been involved in special education programs within the Local System for approximately four and one-half years. He is presently receiving one hour per day of behavioral disorder resource and attending regular classes during the remaining time. The Student also attends a "Challenge" class, but the record is not clear whether the Challenge class constitutes the resource service or is included within the regular class schedule. The present services are pursuant to an IEP prepared in May, 1982, which identified the Student's primary exceptionality as behavior disorder.

The Local System recommended removing the Student from the Challenge class and providing him with learning disabilities resource assistance. The Student's parent, however, disagreed with the Local System's assessment that the Student was suffering from a learning disability. The parent took the position that the Local System had simply failed to teach the Student, and he could not, therefore, be expected to work at grade level. The Student's parent then argued that it was the responsibility of the Local System to provide the Student with the remediation necessary for him to remain enrolled in the Challenge class, without placing him into a learning disabilities program. The Student, however, is unable to perform the work required of the children enrolled in the Challenge class, and the class is not designed to provide remedial services.

The record shows that the Student previously presented behavioral problems while attending school, that he has significant

deficiencies in his level of achievement when compared to both his expected level of achievement and his grade level. If a child has a severe discrepancy between achievement and intellectual ability, the the child may be deemed to have a specific learning disability. 34 CFR 300.541(a).

The State Hearing Officer concludes that the decision of the Regional Hearing Officer is supported by the evidence. It is essential to identify the Student's primary disability and take the necessary steps to cope with his disability. If the Student is unable to perform the work in the Challenge class, there exists the possibility of greater injury to the Student's ability to cope, regardless of whether the Student should or should not have received different educational services in the past. If, as the parent claims, the Local System should provide remedial training, the training should be accomplished in a situation where the Student can be successful rather than in a situation that has been unsuccessful.

For the foregoing reasons, the decision of the Regional Hearing Officer that the Local System can proceed with an evaluation of the Student is hereby

SUSTAINED.

This 21<sup>st</sup> day of November, 1983.

  
\_\_\_\_\_  
L. O. BUCKLAND  
State Hearing Officer