

PART II
FINDINGS OF FACT

The Student is presently attending the Model Secondary School for the Deaf ("MSSD") in Washington, D. C., where he was placed by his parents at the beginning of the 1983-84 school year. The placement was made by the parents without the development of an I.E.P. placing the Student in MSSD. The Student had attended school in the Local System since 1977 when his parents transferred him from the Georgia School for the Deaf at Cave Springs, Georgia. The Student has a profound hearing loss in the right ear and a moderately severe hearing loss in the left ear and is in need of special education.

During the time the Student attended school in the Local System, the parents worked with the Local System to develop I.E.P.'s, received written statements of their rights under the Education for All Handicapped Children Act of 1975 (the "Act"), and expressed much concern about the lack of actual school time due to the time taken to transport the Student to and from school. The Regional Hearing Officer found that the Student showed little progress from 1977 until the parents removed him after the 1982-83 school year. Near the end of the 1982-83 school year, the Local System was advised by the Student's parents that the Student had been accepted at MSSD and would not be returning to the Local System the next fall. The parents placed the Student in the MSSD program and paid the costs associated with the placement. The program at MSSD is a tuition-free program funded by Congress, but the

parents must pay transportation charges, laundry expenses, and activity fees necessary to remain in the program.

The hearing before the Regional Hearing Officer was held on May 18, 1984, and the Regional Hearing Officer's decision was issued on June 14, 1984.

The Regional Hearing Officer refused to dismiss the parent's claim for reimbursement of expenses incurred by the them without the consent of the Local System. He found that the Local System is charged with the responsibility of making certain that parents understand their rights and that the Student's parents did not have their rights meaningfully explained to them until months after placement was changed, and that they then requested a hearing. The Regional Hearing Officer recognized the general rule that has been followed on unilateral placement during the pendency of proceedings, i.e., that expenses pertaining to a unilateral placement are not generally available due to the mandate that the status quo be maintained during the pendency of proceedings under the Act. However, he found that exceptional circumstances existed in that, at the time of the parent's change in placement, there was no special education director in the Local System for the parents to consult with, and when the parents talked to the teacher for the hearing impaired, he did not suggest the development of a new I.E.P. or a due process hearing, even though he opposed the change in placement. The Regional Hearing Officer also distinguished the general rule from the instant case because no administrative or

judicial proceedings were pending when the parents changed the placement, and because none of the previously-decided cases involved a silent acquiescence in the placement change.

In deciding the appropriateness of the proposed placement prospectively, the Regional Hearing Officer found that, although the Local System worked with the parents in attempting to improve the past placements, the current I.E.P. was inappropriate. He further found that the proposed I.E.P. was incomplete, that no evidence of any alternative placement was presented, and that the placement in MSSD was appropriate.

The appeal from the decision of the Regional Hearing Officer was timely filed on July 13, 1984.

PART III

CONCLUSIONS OF LAW

The appeal was made on the grounds (1) the Regional Hearing Officer erred in that he ignored the evidence presented by the Local System (2) the Regional Hearing Officer should have allowed the Local System's request to dismiss the parent's claims for reimbursement due to unilateral and voluntary placement, (3) the Hearing Officer erred in allowing the parent's documentary evidence, (4) the Hearing Officer exceeded his authority in awarding compensatory damages, (5) the Hearing Officer was biased, (6) there was no evidence to dispute the appropriateness of the proposed I.E.P., and (7) the Hearing Officer erred in finding the proposed I.E.P. incomplete.

The parents, who are not represented by counsel, argue that (1) the evidence shows the Local System could not provide an appropriate program since the proposed program was the same as the program offered for the previous six years in which no progress was made, (2) although they received a written statement of their rights, they did not understand them because they were never verbally explained, (3) there was evidence presented supporting the appropriateness of the program at MSSD, and (4) the Regional Hearing Officer only helped them on procedural matters, which was necessary because they were unable to acquire an attorney.

For the purpose of the decision on appeal, the issues involved in this case will be divided into those issues arising as a result of past placement and those issues arising as a result of prospective placement from the date of the Regional Hearing Officer's decision.

The Regional Hearing Officer decided the Local System was responsible for the costs incurred by the Student's parents prior to the date of his decision. He made this decision based upon his finding that there was a due process violation because the Local System failed to comply with the notice requirements of providing a full explanation of all procedural safeguards available to parents, because the Local System had some personnel changes which interfered with the provision of an appropriate education to the Student, because the school system silently acquiesced to the placement, and because no administrative or judicial proceeding was pending

during the change in placement, thus making the cases cited regarding the general rule on unilateral placement inapplicable.

The first issue to be addressed is whether the notice of due process rights provided by the Local System to the Student's parents was sufficient to meet state and federal requirements. There is substantial evidence to support the Regional Hearing Officer's finding that the parents never had their right to request a due process hearing orally explained to them. However, there is no question but that at least one of the parents received written statements of the rights of parents under the Act and that the written statements contained an explanation of the right to a due process hearing. Documents submitted at the hearing contained the following statement:

HEARING:

1) Right to request local mediation and/or an impartial due process hearing to question the agency's identification, evaluation, or placement of your child or to question the agency's provision of a free appropriate public education; 2) Right to be told of any free or low cost legal and other relevant services available (e.g. an expert on handicapping conditions that may be a witness at the hearing); 3) Right to have the hearing chaired by a person not employed by a public agency involved in the education of your child or otherwise having any personal or professional interest in the hearing; ... 7) Right to present evidence and confront, cross-examine and compel the attendance of witnesses; ... 11) Right to appeal to the State Board of Education and receive a decision within 30 days of the filing of an appeal; ... 13) Right to appeal the decision of the State Board of Education to Civil Court; 14) Right to have your child remain in his or her present

present educational placement until completion of all hearing and appeal proceedings, unless parent and agency agree otherwise.

There is no question the parents received a document containing the above statement. It was signed as having been received and understood by the parent as early as October 13, 1980, and it was admitted that this 1980 statement, and other similar statements, was given to the parent on many other occasions. The parent is now taking the position that, even though she received the document containing the above statement, she did not understand it. There is nothing particularly complicated about the wording of the statement giving the parent notice of the right to a hearing. The parent has failed to present any evidence she was unable to understand such a statement if she read it, and, indeed, in presenting the brief in this case, has demonstrated an ability to read and write. The regulations of the State Department of Education, consistent with federal requirements, require that parents shall be provided a full explanation of all the procedural safeguards available to parents. (Georgia Department of Education, Regulations and Procedures, IDDFd3). The same regulation contemplates that such notice shall be in writing unless the written notice is not in the native language of the parent, or unless the parents are unable to read in any language. Here there has been no attempt to show that the parents are unable to read. Indeed, all evidence indicates to the contrary, and thus the notice provided by the Local System met the requirements of state and federal regulations.

the child from the local system at any point in time, which is exactly what occurred in this case. Silent acquiescence on the part of the school system also does not warrant deviation from the general rule. The final reason the Regional Hearing Officer found for not following the general rule regarding unilateral placement was that the cases cited stating

In addition to the due process violation, the Regional Hearing Officer found three other reasons that supported his finding that the Local System was responsible for reimbursing the parents the costs associated with placement. As previously mentioned, the general rule regarding unilateral placement is that a school system will not be held responsible for paying the costs of a placement which is made by a parent unless the school system has agreed to place the student in that placement, either through a properly drawn I.E.P. or pursuant to an agreement to place the student in that placement pending development of a proper I.E.P. The State Hearing Officer is of the opinion that this general rule is a good statement of the law and is supported by the case law cited to the Regional Hearing Officer during the hearing. The Regional Hearing Officer decided that, since the Local System had some personnel changes which interfered with the provision of an appropriate education to the Student, and because the Local System silently acquiesced to the placement, the circumstances justified deviating from the general rule. The State Hearing Officer is of the opinion that neither of these reasons warrants such deviation. School systems will always have personnel changes occurring at any point in time. There is not substantial evidence in the record to show that these personnel changes prevented the parents from requesting a due process hearing if they chose to do so, nor is there any option on the part of a school system to prevent a parent from taking a child out of the system. A parent may choose to remove

in 1977, when the Student came to the Local System from the Georgia School for the Deaf, he read on a third grade level and was on a fifth grade level in the area of mathematics. Undoubtedly these two academic areas are of prime importance in the education of a child. The I.E.P.s in 1978, 1979, 1980, and 1981 all show the Student with the same reading and mathematics ability. The I.E.P. for 1982 does not indicate otherwise. At the hearing, there was considerable testimony by the Student's parents that the Student had not progressed while in the Local System. Even though there was some testimony from witnesses for the Local System that the Student had progressed, the Regional Hearing Officer had substantial evidence before him to conclude to the contrary. The testimony concerning the proposed I.E.P. was sufficient to allow the Regional Hearing Officer to conclude that it would result in essentially the same placement as had been previously provided. The evidence in the record also shows that the Student was of average intelligence. The decision, therefore, of the Regional Hearing Officer that the proposed placement was inappropriate is supported by substantial evidence in the record.

The Local System asserts four additional grounds for its appeal which have not been answered to this point. First, the Local System argues that the Regional Hearing Officer ignored the evidence presented by the Local System. This argument is apparently based on the fact that the Regional Hearing Officer cited the evidence presented by the parents to support his conclusions and did not mention the evidence presented

reimbursement for unilateral placement. While the State Hearing Officer has reversed this part of the Regional Hearing Officer's decision, the decision does not necessarily reflect bias, but rather a reasoned disagreement on the facts and law.

Fourth, the Local System argues that the decision that the proposed I.E.P. was incomplete constitutes reversible error. While the Local System's argument, that the lack of an independent evaluation does not render an I.E.P. incomplete, has merit, the State Hearing Officer has already reached the

by the Local System. The Regional Hearing Officer was not required to cite all evidence presented and chose to cite that which supported his conclusions. This does not present any reversible error.

Second, the Local System argues that the Regional Hearing Officer committed numerous errors in ruling as to the admission of the parent's documentary evidence and in his denial of introduction of documentary evidence by the Local System. The brief submitted by the Local System refers to documents which predated the Student's entrance into the Local System as well as documents concerning the program at MSSD. The admission of these documents does not constitute reversible error in the hearing below. The hearing is not a formal court proceeding and the hearing officer is qualified as an attorney to accept the documents for whatever weight he feels appropriate.

Third, the Local System argues that the Regional Hearing Officer was biased in conducting the hearing and in making his decision. This charge of bias emanates from the fact that the Regional Hearing Officer assisted the parents in various ways during the hearing and had an ex parte conversation with the parents during the lunch period. In cases such as this, where the parents are unrepresented by counsel, the regional hearing officer necessarily must assist the parents to some extent in procedural matters. The parents are unfamiliar with hearings and assistance is necessary in order to insure a smooth and orderly proceeding which presents the evidence necessary to decide the issues raised. A regional

responsible for the costs associated with the placement of the Student in the Model Secondary School for the Deaf prior to the Regional Hearing Officer's decision. The State Hearing Officer therefore reverses that portion of the Regional Hearing Officer's decision requiring payment for placement prior to the decision of the Regional Hearing Officer. However, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer that the Local System did not offer an appropriate program is supported by substantial evidence and therefore sustains the decision of the Regional Hearing Officer in that regard.

This 13th day of August, 1984.



L. O. BUCKLAND
State Hearing Officer