

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**IN: RE ASHLEY M. :**  
**: :**  
**: CASE NO. 1984-12 :**  
**: :**  
**: DECISION OF :**  
**: STATE HEARING OFFICER :**

**PART I**

**SUMMARY OF APPEAL**

This is an appeal by the Cobb County Board of Education (hereinafter “Local System”) from the decision of a regional hearing officer which required that Ashley M. (hereinafter “Student”) be provided an appropriate education in a residential setting. This is an unusual case in that the Student had been committed to the custody of the Department of Human Resources (hereinafter “DHR”) at the time the hearing began. The Regional Hearing Officer brought DHR into the proceeding and ordered that they provide the residential placement. The Regional Hearing Officer further ordered that Cobb County should provide appropriate personnel for staffing the Student, and that they should continue placement in a residential setting for the 1984-85 school year after the Student’s release by DHR, if DHR could no longer be required to provide residential placement.

The Local System maintains the Regional Hearing Officer erred in including the Local System in the relief granted the Student and in deciding the Student needed residential placement. The decision of the Regional Hearing Officer as it applies to the Local System is reversed.

**PART II**  
**FINDINGS OF FACT**

The Student is a sixteen-year-old male who has had a history of failure to respond to discipline in any meaningful manner. His natural parents divorced when he was approximately eleven years old and his mother retained custody of the Student. She remarried the following year. The Student's stepfather began providing most of the discipline to the Student because he realized the difficulties the Student's mother had in disciplining the Student created too much tension between the Student and his mother.

The Student maintained a regular progression in school with no significant problems until the ninth grade. At that point, truancy became a major problem. During this same period of time, the Student ran away from home several times. Both parents worked hard to try to help the Student and they began to seek help from the Local System as well as with a community agency which assists in family counseling. The Local System staffed the Student into a special education program in April of 1983. They placed the Student, with parental consent, in a psychoeducational center in Cobb County in an attempt to correct what they classified as a behavior disorder. He finished the 1982-83 school year in that program and returned there for the 1983-84 school year. Until sometime in January of 1984, the Student progressed adequately in that program. The Local System, using a special bus, picked the Student up at home, took him to school, and then brought him home. While at school, the Student was closely supervised. Thus, his attendance improved. However, at some time between September and January, but apparently after school hours, the Student committed two burglaries and was required to appear before the Juvenile Court. The Juvenile Judge gave the Student a one-year probation and told him if he got in trouble with the law again he would have to be incarcerated. Soon thereafter, the Student committed another burglary with

several of his peers. He was caught and given a two-year sentence with custody being turned over to DHR.

DHR first placed the Student in a Regional Youth Development Center (hereinafter "RYDC") which is a regional institution established to detain and rehabilitate delinquent youths. While the Student was placed in the RYDC, his parents attempted to work out funding for private residential placement. The testimony indicates that local officials were willing to place the Student in a private residential program if funding could be worked out. If funding could not be worked out, then DHR intended to transfer the Student from the RYDC to the State Youth Development Center in Milledgeville (hereinafter "YDC"). Because the parents were attempting to work out a placement other than the YDC, the Student was kept at the RYDC longer than the normal time before being sent to the YDC. Eventually, when it was determined that the parents would not be able to arrange such funding, and that DHR could not fund such a placement, the Student was sent to the YDC.

After the time the Student was in detention at the RYDC for the third burglary, but prior to the time he was committed to the custody of the DHR, his parents requested a hearing by the Local System under Public Law 94 142, seeking placement of the Student by the Local System in a residential treatment facility. The hearing began on March 27, 1984, with the Local System and the parents as parties. It continued over to the next day. At the close of the hearing, the Regional Hearing Officer, on her own motion, raised the question of the responsibility of DHR towards the Student. Thereafter, the Local System brought motions to dismiss the due process hearing and to substitute the State Department of Education as Respondent in lieu of the Local System. The parents, at all times represented by counsel, moved to add DHR as a party. The Regional Hearing Officer denied the Local System's motions to dismiss and to substitute the State Department of Education as Respondent, and granted the parents' motion to add DHR as a party.

The hearing was continued on July 10, 1984 with DHR presenting witnesses to support their position that they had not violated the rights of the Student, and that they had appropriately placed the Student.

The Regional Hearing Officer issued her decision on August 6, 1984. The decision portion of the opinion is as follows:

1. The student should be offered an educational placement for the 1984-85 school year in a residential treatment program

If a residential placement is unacceptable to the student and his parents, then he should be provided any other educational placement which he is willing to attend and which a properly constituted staffing committee including representatives from the Cobb County Public Schools, deems appropriate.

2. The Department of Human Resources should provide the above placement based upon the findings and conclusions that the student is handicapped, that he has been placed by court order in the Department's custody for two years, and that DHR has failed procedurally and substantively to provide him a free appropriate public education during the six months he has spent in custody.
3. The Cobb County Public Schools should cooperate fully with the Department of Human Resources in formulating the student's 1984-1985 IEP by providing appropriate personnel for a staffing.

If DHR cannot be compelled to provide educational services beyond the period of custody and aftercare of the student and if these periods are lawfully completed before the end of the 1984-1985 school year, then the Cobb County Public Schools should continue his 1984-1985 placement for the remainder of that school year.

The Regional Hearing Officer mailed the decision to the Local System and to DHR, return receipt requested and the Local System received the decision on August 7, 1984. DHR also received the decision on August 7, 1984. The Local System filed its notice of appeal by letter dated August 30, 1984, and it was received by the State Superintendent on September 4, 1984. No appeal has been made by DHR.

### **PART III**

#### **CONCLUSIONS OF LAW**

The Local System's appeal was made on the grounds the Regional Hearing Officer erred in failing to dismiss the Local System, on the grounds the Regional Hearing Officer erred in applying Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982) to the program offered by the local system, on the grounds the Regional Hearing Officer erred in concluding that problems occurring outside of the school program necessitated residential placement, and on other grounds which need not be discussed in light of the State Hearing Officer's conclusions on the arguments listed above.

The Local System's motion to dismiss was made on the basis that DHR had been granted custody of the Student and because the State Department of Education has an agreement with DHR that it is the responsibility of DHR to develop and implement an I.E.P. for handicapped students. For the following reasons, the State Hearing Officer is of the opinion the motion to dismiss should have been granted. At the time the hearing was held, the Local System could not have placed the student in a residential program because the custody of the Student had been transferred to DHR by the Juvenile Court. The fact that the officials of the RYDC were willing to place the Student in a residential facility if the Local System would pay for it does not negate the fact that the placement would have been made by DHR and not by the Local System. Section III of the agreement between DHR and the Department of Education provides "DHR shall provide facilities, staff, equipment and materials needed to operate programs for meeting special education needs of handicapped individuals in institutions/hospitals." Thus, it is clear under the agreement between the Department of Education and DHR that the education of students identified as handicapped, who are placed in the custody of DHR, becomes the responsibility of DHR. In Section II A.2c, DHR has

agreed to provide the procedural safeguards outlined in the Department of Education's Regulations and Procedures Manual. When the Student was committed to the YDC, the Local System had an obligation to submit educational records to DER upon request. However, the Local System does not have the obligation to provide education to the Student during the time the Student is restrained in the YDC. The physical placement of the Student in the YDC in this instance is similar to a voluntary wove out of the school system by a student and his parents, or an emergency placement for the protection of others. When such a change occurs, the old local system is no longer responsible for providing an appropriate education for a student. In the instant case, the Student was aware that further violations of the law would result in his detention in an YDC. He chose to commit burglary anyway and thus received the consequences of his actions; i.e., a voluntary wove out of the Local System. It is also similar to an emergency placement in that a determination was made (in this instance a judicial determination) that the Student needed to be removed from society for the protection of others. If the Student returns from the YDC to the Local System, the Local System will have an obligation to develop an I.E.P. and provide the Student an appropriate education if the Student remains handicapped. The Student could spend until January 21, 1985 in the YDC or could have been released as soon as September 21, 1984. Undoubtedly, circumstances will have changed by the time the Student returns. The Local System would have to reconsider any program it was going to offer the Student, in light of the change in circumstances. Thus, the Local System's motion to dismiss should have been granted since the Student voluntarily removed himself from the Local System and custody of the Student was in the hands of DHR.

In addition to the fact the motion to dismiss should have been granted, there was not substantial evidence to support the decision of the Regional Hearing Officer that the program offered by the Local System was not appropriate and that a residential program was necessary to provide the Student with an appropriate education. The Student received all the procedural

protection required of the Local System and the program provided by the Local System was sufficient to confer educational benefits upon the Student as is required by Rowley, supra.

The testimony showed the I.E.P. offered by the Local System was appropriate and the parties agreed that the goals of the I.E.P. were appropriate. there were only two significant areas in which testimony was offered to show that the implementation of the I.E.P. was lacking. First, the testimony showed that, even though the Student had progressed satisfactorily, he failed to learn not to burglarize once he was out of the school setting. Thus, it was argued that he needs full time residential placement because he gets in trouble after school hours. However, it is not the duty of the Local System to be the caretaker of the Student. The law requires that the Local System provide an appropriate education. The fact that the Student leaves the school grounds and commits a burglary is not something which, by itself, creates an obligation on the Local System to place the Student in residential care. If a local system can provide a student an appropriate education, it is not required to provide private residential placement because of some factor beyond the student's educational needs. See, In Re: Edwin L., Case No. 1981-8; In Re: Victor B., Case No. 1981-1. Indeed, custody by DHR is specifically designed to solve the problem created by a youth who needs restrictions after school hours in order to protect society. See, In Re: Morgan W., Case No. 1982-27; In Re: Kelly M., Case No. 1981-19. The second area in which testimony was offered to show the I.E.P. was lacking was the question of the amount of psychotherapy needed in order to help the student recognize the problems with his behavior. Because the Local System agreed the Student was Behavior Disordered, it was incumbent upon them to provide special education and related services necessary to provide an appropriate education to the Student. However, it is important to note there is no requirement that the Local System provide related services, such as psychotherapy, if they are not necessary to the education of a student. In the instant case, the Student had no trouble learning and progressing in his educational pursuits, provided the Local System and the Student's parents were able to keep

the Student in attendance. The Local System demonstrated that the Student had good attendance while in its program. Therefore, the requested psychotherapy is not necessary to provide an appropriate education to the Student. See, In Re: Edwin L., Case No. 1981 8. Even if the psychotherapy were necessary, there is no showing as to why it could not be provided by the Local System or why a residential program would be necessary to provide it.

The record on appeal reflects that DHR received a copy of the decision of the Regional Hearing Officer on August 7, 1984. The State Board of Education appeals policy provides that the decision of the regional hearing officer will be binding on the parties unless appealed within 30 calendar days. DHR consented to being a party to the hearing as they allowed themselves to be brought in without objection. Normally, if a parent objects to the educational placement of a student who is in the custody of DHR, the parent should request a hearing of DHR. However, in this instance, DHR consented to being brought into the hearing and then chose not to appeal the decision of the Regional Hearing Officer. While the State Hearing Officer is of the opinion the reasoning applicable to the Local System with regard to the need for private residential placement is also applicable to DHR, DHR chose not to appeal, and thus the decision of the Regional Hearing Officer is binding on DHR.

#### **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 Local System should have been dismissed pursuant to their motion to dismiss and there is not substantial evidence to support the decision of the Regional Hearing Officer that the Local System could not provide an appropriate education to the Student. The decision, therefore, of the Regional Hearing Officer, insofar as it relates to the Local System, is hereby reversed. The decision, however, is binding upon DHR, since it chose not to appeal.



This                    day of September, 1984.

L. O. BUCKLAND  
STATE HEARING OFFICER