

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHRISTOPHER N.)	
)	
v.)	CASE NO. 1984-18
)	
ROCKDALE COUNTY)	DECISION OF
BOARD OF EDUCATION)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents (hereinafter sometimes referred to as “Appellants”) of Christopher N. (hereinafter “Student”) from a decision of a regional hearing officer that the Rockdale County Board of Education (hereinafter “Local System”) could provide an appropriate education to the Student. The appeal is based upon the Student’s parents’ contention that the Student needs residential placement.

PART II

FACTUAL BACKGROUND

The Student has had a history of behavior problems which are extensively documented in the approximately 3,000 page record submitted on appeal, and which are well summarized in the Regional Hearing Officer’s findings of fact. The Student has been in public school for a short period of time, but he has been placed in both residential and nonresidential private schools for most of his formal education. His private school placements have, to date, not been made by the Local System, but rather have been placements made by the parents. A hearing under the Education for All Handicapped Children Act (hereinafter the “Act”) was held in May of 1979 at the parents’ request. At that time, the parents sought private placement of the Student

at the Local System's expense. The regional hearing officer issued a decision in favor of private placement based upon a finding that the program proposed by the Local System was not appropriate.

The 1979 hearing was held prior to the changes in the hearing procedures necessitated by the decision in Helms v. McDaniel, 657 F2d 800 (5th Cir. 1981). At that time, the procedures provided for the regional hearing officer's decision to be either accepted or rejected by a local system. If the decision was rejected by the local system, there was an automatic appeal to the State Board of Education. The State Board of Education then received the record and a recommendation from the State Hearing Officer, and made an independent decision on the appeal from the decision of the local system.

In the 1979 hearing, the Local System rejected the decision of the regional hearing officer. Thus, an appeal was automatically taken from the decision of the Local System to the State Board of Education. The State hearing Officer recommended that the decision of the Regional Hearing Officer be upheld because there was evidence to support the decision, and because the Local System failed to give any reason for rejecting the decision of the regional hearing officer. The State Board of Education rejected the State Hearing Officer's recommendation and sustained the decision of the Local System. The State Board of Education's decision was made on July 12, 1979. The parents filed a civil action in Federal District Court in November of 1979. The case is still pending before the Federal District Court.

The current appeal arises from the Regional Hearing Officer's decision issued November 5, 1984. The parents requested a hearing on August 15, 1984, to contest the appropriateness of a placement offered by the Local System. They, again, contended that the placement offered by the Local System would not meet the Student's needs, and that full-time

residential placement was necessary. The Regional Hearing Officer held a hearing on September 12, 1984. At that time, the parties agreed that the Regional Hearing Officer would not hear direct testimony, but would receive an extensive record, including the transcripts of the testimony of various witnesses who testified in the Federal District Court case.

The purpose of the hearing below, as stated by the Regional Hearing Officer, was to determine whether the Student requires placement in a residential treatment center in order to benefit from special education, and, more specifically, whether the requested residential placement was a necessary related service. The Regional Hearing Officer limited his consideration to prospective placement of the Student.

The Regional Hearing Officer found that the Student was handicapped, within the guidelines promulgated by the Act, with an emotional disorder, and that the Student needed special education services. He found the general diagnosis of the Student to be conduct disorder, under socialized, non-aggressive type, and attention deficit disorder. He concluded that the parents had failed to show that the behavioral patterns outside the classroom had interfered with the Student's ability to learn, and that the individualized education program ("IEP") offered by the Local System satisfied the federal mandate of a free, appropriate public education for the Student.

PART III

DISCUSSION

In their letter of appeal, the parents first contest the Regional Hearing Officer's conclusion that they failed to show that the Student's behavioral patterns outside the classroom have interfered with his ability to learn. They then contend that the IEP offered by the Local

System does not adequately deal with the behavioral problems outside the classroom which interfere with the Student's educational process.

The State Hearing Officer is bound to follow the decision of the Regional Hearing Officer if there is substantial evidence to support the Regional Hearing Officer's decision. (State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51.)

In this case, there is substantial evidence in the record to support the Regional Hearing Officer's finding that the Student has an emotional disturbance and has an attention deficit disorder. While other possible problems were noted by some witnesses, both Appellant's and Appellee's witnesses were in general agreement that the Student had a conduct disorder and an attention deficit disorder. Dr. Zanville described the conduct disorder as non-aggressive, under socialized, and later changed his description to aggressive. Dr. Ricks diagnosed the Student as additionally having an identity disorder as well as a narcissistic personality disorder. Thus, the evidence, as presented by both sides, clearly supports the Regional Hearing Officer's determination that the Student has an emotional disturbance and an attention deficit disorder. The Regional Hearing Officer has also determined that the Student is in need of special education services. This conclusion is not disputed by the parties or contested on appeal.

The parties also agreed that the goals and objectives of the IEP drawn by the Local System were appropriate for the Student. The Student's parents, however, contend that the Local System's method of achieving the goals is inappropriate. The placement offered by the Local System provides for extended day services, a summer program, and transportation from home to school and back home again. The IEP further provides for a highly structured academic

program with a low pupil/teacher ratio, special resource assistance in mathematics and the availability of psychotherapy services.

The Regional Hearing Officer reviewed the provisions of the program offered by the Local System in light of the standards set forth by the U. S. Supreme Court in the case of *Hendrick Hudson District Board of Education v. ~ 73 L.Ed.2d 690 (1982)*. There, the Court concluded that “the ‘basic floor of opportunity’ provided by the Act consists of access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child”. *Id.* at

708. The Court did not establish a general test to determine the adequacy of educational benefits conferred upon children covered by the Act, but rather confined its analysis to the facts of that case. The Court concluded that when, taking the preference of the Act towards mainstreaming into account, the child maintains passing marks and advances from grade to grade in the normal classroom setting, the purpose of the Act has been met.

The Regional Hearing Officer, after a review of the record, concluded that the Student is able to achieve academically when in a structured classroom with a low teacher/pupil ratio and, thus, could benefit from the program proposed by the Local System. The Student has only briefly attended public school. His private school placements have generally not been placements which could be considered to be placements in the least restrictive environment because of their residential or institutional nature. The Regional Hearing Officer also recognized some difficulty in determining whether the Student could benefit from such a placement.

The problem, however, does not automatically justify residential placement. The requirement that a student be educated in the least restrictive environment places the burden of proving that a

more restrictive environment is necessary on the party desiring the restrictive placement. *John A. v. Hinson*, Civil Action File No. C79—2154A (N.D. Ga. Jan. 16, 1979). The Regional Hearing Officer considered the requirement that students be educated in the least restrictive environment and determined that the Student's parents failed to demonstrate that the behavioral patterns outside the classroom had interfered with the Student's ability to learn. He also concluded that the program offered by the Local System was less restrictive than the residential placement sought by the Student's parents.

The record supports the determination of the Regional Hearing Officer that the Student's parents failed to demonstrate that the behavioral problems outside the classroom interfered with the Student's ability to learn. the Student's grades have been adequate and his test scores indicate he has learned from his school experience. The only benefit demonstrated by the Student's parents from a residential setting is that the Student, when confined in a strict environment, cannot escape and cause society and his parents problems. This benefit, while valuable, is not required to be provided by the Local System. *McKenzie v. Jefferson*, 566 F.Supp. 404 (D. D.C. 1983); *In re: Victor B., State Board of Education Case Nos. 1981-1, 1981-8*.

Appellant also argues that the current hearing process they are pursuing is unconstitutional because it is ineffective to cure a denial of due process which they contend occurred when the State Board of Education overruled the decisions of the Regional Hearing Officer in 1979. This argument is only briefly put forth in their letter of appeal and is unsupported by any argument made before the Regional Hearing Officer. Arguments may not be made on appeal which have not been set forth in the action from which the appeal has been taken. Here, the question of the effectiveness of this hearing process to remedy any defects which occurred in the past was not raised in the regional hearing. Indeed, the purpose of the

hearing was to determine whether the Student could be provided an appropriate education through the placement offered by the Local System or whether the Student needed residential placement in order to receive an appropriate education.

In addition to the fact the denial of due process issue was not argued below, the issue would also appear to be precluded by virtue of the assumption of jurisdiction by the Federal District Court where Appellant has sought injunctive and declaratory relief to remedy the alleged past violations of federal and state law. The instant process is entirely prospective in nature and rests upon its own set of facts regarding whether due process has been provided. The State Hearing Officer, therefore, concludes that the issue of whether due process was provided in a previous proceeding has been improperly raised in this appeal, and the State Hearing Officer is without jurisdiction to decide the issue even if it had been properly raised.

PART IV

CONCLUSION

Based upon the record presented and the foregoing discussion, the State Hearing Officer is of the opinion that there is substantial evidence in the record to support the decision of the Regional Hearing Officer that the program offered by the Local System is appropriate for the Student's educational needs. The decision of the Regional Hearing Officer is, therefore,

SUSTAINED.

This 31st day of December, 1984.

L. O. BUCKLAND
STATE HEARING OFFICER