

STATE BOARD OF EDUCATION

STATE OF GEORGIA

REX M.

v.

LAGRANGE CITY SCHOOL SYSTEM

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CASE NO. 1984-19

DECISION OF
STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents (hereinafter sometimes referred to as "Appellants") of Rex M. (hereinafter "Student") from a decision of a regional hearing officer that the LaGrange City School System (hereinafter "Local System") could provide the Student an appropriate education in a program generally designed for the moderately mentally handicapped (hereinafter "MO") if the Student's Individualized Education Plan (hereinafter "IEP") is modified to address certain deficiencies found by the Regional Hearing Officer. The deficiencies the Regional Hearing Officer found were that the IEP should specify the period of time to be devoted to reading and arithmetic as opposed to survival skills, the opportunities for mainstreaming the Student, and that a substantial portion of his studies within the program should be with groups of children of similar ability to the Student. The appeal is based on the Student's parents' contention that the proposed placement is inappropriate.

PART II

FACTUAL BACKGROUND

The Student is a twelve and one-half year old boy who has been diagnosed as Mongoloid, with Down's Syndrome since shortly after his birth. With the exception of his recent withdrawal, he has been involved in formal education settings since 1977. He has been

in a special education program for the mildly mentally handicapped (hereinafter "MI") in the Local System from the beginning of the 1980-81 school year to the end of the 1983-84 school year. Placement in the MI program for the past four school years has been largely the result of the parents' desire that the Student be in the MI program as opposed to the MO program. Local System personnel have generally recommended MO placement for the Student but have placed the Student in MI programs "to give the Student a chance" and to comply with the request of the parents. Local System personnel met with the parents in August of 1984 to develop a new IEP for the 1984 1985 school year. At that meeting, Local System personnel recommended placement in the MO program at Boy's Junior High and the parents refused permission for the Student to be enrolled in that program. The parents removed the Student from the Local System and began providing a tutor at home for the Student. The Local System apparently offered to maintain the past placement until the conclusion of the appeals process but the parents did not accept the offer. No issue has been raised, either in the hearing below or on appeal, concerning maintenance of placement.

Initially, the parents requested a hearing to contest the appropriateness of the proposed MO placement. However, the parents withdrew the request for fear that the filing of the request for a hearing would impose upon them the burden of proof. The Regional Hearing Officer ruled that the burden of proof was not affected by the identity of the party who filed the request for a hearing. Based on the Regional Hearing Officer's ruling, the Local System then requested that the hearing go forward. Neither party contested the Regional Hearing Officer's ruling concerning the burden of proof at the time he made the ruling and neither party contested the ruling on appeal. The parties stipulated that the issue for the hearing concerned the appropriate placement of the Student for the 1984-85 academic year.

The hearing below was held on October 5 and 12, 1984, and the Regional Hearing Officer issued a decision on November 6, 1984. The instant appeal was received by the State Superintendent of Schools on December 5, 1984. The parties were given the opportunity to file briefs in support of their positions on appeal but they notified the State Department of Education that briefs would not be filed. The basis for the appeal, as stated in Appellants' notice of appeal, is "that the [Regional] Hearing Officer erred in finding that the proposed placement [of the Student] for the academic year 1984-1985 in the program for the moderately mentally handicapped at the intermediate level at LaGrange Boy's Junior High School, as such program is presently constituted, will provide an appropriate public education for the said [Student]."

The Regional Hearing Officer found that the Student continued to be handicapped by retardation as a result of Down's Syndrome and his past four years in the MI program had resulted only in a modest benefit. The Regional Hearing Officer determined that the Student was likely to receive greater benefit from an MO program as opposed to an MI program and that the Student's socialization needs would be better met in the proposed placement than in past placements because he would be among children nearer his own age. The Regional Hearing Officer then concluded that the proposed placement would provide the child a "free appropriate public education" within the meaning of the Education for All Handicapped Children Act (hereinafter the "Act") if the IEP was modified to meet the deficiencies he found. The modifications he suggested could be accommodated within the placement offered.

PART III

DISCUSSION

This case is one in which the parents are dissatisfied with the program which the Local System is offering for the 1984-85 school year, largely because they do not feel it offers enough "academics" as opposed to "survival skills." The increased academics they

seek are those typically provided by public schools; i.e., reading, social studies, science and arithmetic.

The Local System has concluded that the Student needs more emphasis on survival skills, such as housekeeping, cooking, avoiding the dangers in the world, and generally living in society. The testimony indicates that typically MO children are unable to attain complete independence but they can attain some degree of ability to care for themselves. They will generally always need a sheltered environment. The testimony also indicates that the Student falls in the range of handicapped individuals who are categorized as MO, although he is at the upper end of that category.

While there is some indication in this case that the parties are concerned over the label attached to the Student, it is significant that, at the hearing, both sides denied that was at issue and, instead, discussed the content of the program offered for the Student. It is important to note that, while public schools generally offer education in a fairly standard format for non-handicapped students, they are required to specially design programs to meet the needs of handicapped students. This requirement does not mean that handicapped students cannot be educated with other students, but it does mean that each handicapped student is entitled to have his program modified to meet his own special needs.

In the instant case, the Regional Hearing Officer considered the IEP proposed by the Local System and suggested that it be modified. The suggested modifications are consistent with the Act's requirement that the program be specially designed to meet the unique needs of the Student. The Student's parents were unable to point out what modifications should be made to the program offered by the Local System to meet their desires. They indicated that something between the MO and the MI program might meet the Student's needs. It is clear that the parents are seeking what they feel is best for their child. They have worked diligently with the Student and have

proven the Student can make some academic progress. However, the testimony offered showed that the Student had made little real progress in academics in his four years in the MI program. Appellants attempted to dispute this fact, arguing that if little progress had been made, it was due to the fact that the Local System had treated the Student as an MO child even though he had been in an MI class, and that a problem with medication which had been improperly taken by the Student could have affected the lack of educational improvement. Absent any finding that the State of Georgia has required more than is required by the Act, the Regional Hearing Officer was bound to follow the decision of the Supreme Court in Hendrick Hudson District Board of Education

v. Rowley, 73 L.Ed.2d 690 (1982), that the Act requires “specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child,” Id. at 708, and as the Regional Hearing Officer quoted, “the program be designed to enable the child to achieve a reasonable degree of self-sufficiency.” Id. at 708, 709, n. 23.

The Regional Hearing Officer applied that standard and determined from the records and testimony presented that the Local System had offered a program sufficient to comply with its obligation under the Act.

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 1984-86, pg. 51.

In the instant case, the Local System presented testimony from the Director of Special Education, a teacher of the moderately handicapped, a teacher of the mildly handicapped, the school psychometrist, and the teacher of the MO class at Boy’s Junior High. These witnesses presented extensive testimony from which the Regional Hearing Officer could have reached his conclusion that the program offered to the Student would be

appropriate. Appellants' witnesses did not dispel the position of the school system that the program offered was appropriate. Appellants' witnesses generally presented the view that the Student was on the borderline between MO and MI. Their position was that the Student should be placed in a more academically oriented program to give him a chance to succeed in those areas. Their testimony tended to ignore the fact that the Student had been placed in the more academically oriented program for the previous four years with little success. Even if the Regional Hearing Officer accepted the testimony of the Appellants' witnesses that the Student was borderline, he would have been justified in finding the program offered was appropriate because ample testimony was put forth that the MI program did not succeed and that an MO program would be more appropriate for the Student. In addition, the Regional Hearing Officer did choose to address Appellants' academic desires by requiring the academic program to be further specified in the IEP. Thus, the Regional Hearing Officer's decision was supported by substantial evidence in the record.

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, when modified according to the Regional Hearing Officer's recommendation, will be appropriate for the Student's educational needs.

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

This 4th day of January, 1985.

L. O. BUCKLAND
State Hearing Officer