

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: WESLEY B.,)	
)	
Appellant,)	
)	
v.)	CASE NO. 1984-23
)	
MURRAY COUNTY BOARD OF)	
EDUCATION)	
)	
Appellee.)	DECISION OF STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision of a regional hearing officer that the Murray County Board of Education (hereinafter "Local Board") had proposed an appropriate program with a properly drawn IEP for Wesley B. (hereinafter "Student") and that the Local Board had the ability to implement the proposed program. The Student, through his parents, contends that the IEP was improperly drawn and that the placement actually offered is insufficient. The Local Board contends it has offered an appropriate program, is prepared to provide that program, and is not required to provide an optional program. The State Hearing Officer holds that the decision of the Regional Hearing Officer is affirmed.

PART II

FACTUAL BACKGROUND

This is the third appeal since 1981 regarding the placement of this Student. The question of placement is also currently pending in the United States District Court for the Northern District of Georgia (Rome Division) on review of a 1983 regional hearing officer's decision and the subsequent State Hearing Officer's decision.

The Student is a fourteen-year-old multi-handicapped male who suffers from receptive and expressive aphasia complicated by other medical problems including seizures. He has been in a private residential setting since 1979. In the first review of an appeal concerning this Student, it was decided the Student's educational needs could be met outside a residential setting, but the Student's placement could not be decided until an IEP had been prepared with consideration given to the amount of regression the Student would suffer if he was not offered an extended year program. The Local Board subsequently convened a placement committee meeting to prepare an IEP. The parties could not agree on the Student's needs and another hearing before a regional hearing officer was requested by the Student's parents. The Regional Hearing Officer, in that case, required an amended IEP. The Regional Hearing Officer then determined the amended IEP was complete and the proposed services, including extended year services, were adequate to meet the Student's needs without physical and occupational therapy or residential placement. The decision was affirmed on appeal. In August of 1983, the Student's parents filed suit in Federal District Court. The case remains pending at this time, but the Court has ruled that, under the facts of this case, the burden of proof is on the Local Board. Previous decisions by both the regional hearing officers and the state hearing officers had placed the burden of proof on the parents, as they were the party requesting the hearing and they were requesting residential placement. The Regional Hearing Officer, in the instant case, conformed to the Federal District Court's opinion and placed the burden of proof on the Local Board.

The issue before the Regional Hearing Officer was whether the IEP for the present year (1984-85) is appropriate. The Local Board and parents agreed that the short and long-term goals were proper and that no due process or procedural violations were in question concerning this IEP. The issues argued at the hearing directly concern the parents' desire for residential placement, recreational therapy, occupational therapy, the length of the extended program, the number of hours to be devoted to the self-contained language based classroom, speech therapy, adaptive P.E., physical therapy, and the qualifications of the teachers

providing the services. The Regional Hearing Officer held that the Local Board had met the burden of proof, and that the program offered by the Local Board, which does not include residential placement, was appropriate.

PART III

DISCUSSION

The Regional Hearing Officer considered the request for occupational therapy and recreational therapy in light of the history of the case and the evidence presented and determined that occupational therapy and recreational therapy were not needed. The Regional Hearing Officer noted that occupational therapy had not been previously raised as an issue and had not been recommended. Prior IEP's had been implemented without occupational therapy and the child had benefited from the educational experience received under those IEP's. Testimony was given that an occupational therapist was available in the area of the Local Board, but that at present, it was felt the physical therapist could serve the Student's needs (T-79). The Student's parents' witness failed to present any reason why the goals of the IEP could not be met by the physical therapist (T-121). The testimony was that the witness assumed there must be goals that only an occupational therapist could meet. The witness was unable to substantiate that assumption with any particulars because the witness lacked the expertise to make that determination. No other witness was presented to support the Student's parents' position with regard to occupational therapy. Based on this testimony and the record, the Regional Hearing Officer had substantial evidence to support the decision that occupational therapy was not needed and that very little evidence supported any such needs.

The Regional Hearing Officer considered the request for recreational therapy and determined that, while such a service would complement and enhance the Student's educational experience, it was not necessary. There was sufficient testimony that, although recreational therapy would be beneficial to the Student, the Student would still benefit from the educational program offered by the Local Board. The witness presented by the Student's parents conceded that the program offered by the Local Board would be of benefit and provide educational development for the Student (T-124, 125). The Local Board's witness

testified they were able to offer a program which would meet the needs of the Student. thus, the Regional Hearing Officer's decision that recreational therapy was not necessary was supported by substantial evidence.

The TEP provides for physical therapy for thirty minutes a day. The testimony given during the hearing shows that the physical therapist sets up a program of exercise which is carried out four days a week under the direction of a teacher licensed to teach multi-handicapped. The physical therapist provides direct services during the days the physical therapist is present. In a prior appeal, the State Hearing Officer ruled that the Local Board would have to provide direct services by a licensed physical therapist for the time the classroom teacher would have provided such services if the practice now being offered is prohibited. The Regional Hearing Officer found that the services offered were substantially the same as those being offered by the residential school and were sufficient. Whether the teacher is providing an exercise program which would be authorized, or providing prohibited physical therapy is a question that cannot be determined from the evidence presented. The Regional Hearing Officer ruled that the services were sufficient to meet the needs of the Student. There was sufficient testimony that the Local Board could provide the necessary physical therapy. Presumably, an exercise program may be offered which would not violate any legal requirements. If there is a concern about whether the physical therapy being provided to determine that the less restrictive placement in Murray County was appropriate and therefore the more restrictive residential placement was unnecessary. The Local Board should be given an opportunity to demonstrate that it can provide an appropriate program.

PART IV

CONCLUSION

Based upon the above, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion the Local Board met the burden of proof and there exists substantial evidence to support the Regional Hearing Officer's decision that the Local Board

can provide a free, appropriate public education in the least restrictive environment with the program offered. The decision of the Regional Hearing Officer, therefore, is hereby

AFFIRMED.

This 26th day of March, 1985.

L. O. BUCKLAND
State Hearing Officer