

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JEFFREY S.,	:	
	:	
Appellant	:	
	:	CASE NO. 1987-12
v	:	
	:	DECISION
	:	
BRYAN COUNTY BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Jeffrey S. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Bryan County Board of Education (hereinafter "Local Board") did not have to educate the Student in a class with other students, had to increase its hours of instruction from five hours to nine hours per week, and had to provide transportation from home to school and back. The Student contends the program is not in the Least Restrictive Environment, he needs additional curriculum, the IEP is not specifically designed for his handicap, the amount of instruction time does not meet the minimum standard, and he is being discriminated against on the basis of his handicap.

PART II

FACTUAL BACKGROUND

The Student is a thirteen year old male who is mildly mentally handicapped and a Hepatitis B carrier. When the Local Board found that the Student was a Hepatitis B carrier, and further found that Hepatitis B was an infectious disease, it removed the Student from contact with other Students. The Local Board later provided the Student with an IEP which provided for an after school hours program of one-on-one instruction for a period of six hours per week. The

Student's parent disagreed with the proposed IEP and requested a hearing on December 16, 1987.

At the beginning of the hearing, the Student's attorney stated the issue as being that the Student was not being educated in the Least Restrictive Environment and not receiving necessary related services such as transportation. Thus, throughout the hearing the issue was whether the Student should be entitled to attend the mildly mentally handicapped program as if he did not carry Hepatitis B.

The testimony at the hearing showed that, if an individual showed good personal hygiene, the risk of transmission is negligible. The testimony also showed that the Student had not shown he had good personal hygiene, or the ability to exercise good personal hygiene.

Based upon the finding that the Student had not shown the ability to exercise good personal hygiene, the Regional Hearing Officer found that the Local Board did not have to educate the Student in the regular classroom and should provide the Student with a program consistent with the IEP, increase the instructional time to nine (9) hours per week, and provide the Student with transportation to and from the instruction. The Regional Hearing Officer issued his decision on February 23, 1987.

The Student appealed by letter dated March 23, 1987.

PART III

DISCUSSION

The issue in this appeal is whether the Student is being educated in the Least Restrictive Environment. The Local Board is not contesting the Regional Hearing Officer's order to provide additional hours of education and the Local Board has included instruction in hygiene in the Student's program. While the Student raises issues claiming he is entitled to the same number of

hours of instruction as non-handicapped students and discrimination due to his handicap of being a Hepatitis B carrier, if the Student is being provided an appropriate education in the Least Restrictive Environment, the Local Board has met its obligations under both the Education for All Handicapped Children's Act and Section 504 of the Rehabilitation Act, as amended.

The State Hearing Officer is bound to follow the decision of the Regional Hearing Officer if that decision, is supported by substantial evidence. State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51.

The requirement that a student be educated in the Least Restrictive Environment is:

- (1) That to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped, and
- (2) That special classes, separate schooling or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. (34 C.F.R. § 300.550)

Georgia Department of Education Regulations require:

To the maximum extent appropriate, exceptional children in Georgia shall be educated with children who are not handicapped. Special classes, separate schooling or other removal of handicapped children from the regular class environment shall occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be satisfactorily achieved. Further, it is the policy of the Georgia Department of Education that handicapped children have the right to be educated with their normal peers, unless clear evidence is available that partial or full removal is desirable for the welfare of the child or other children. (Georgia Department of Education, Regulations and Procedures IDDFd3 (II.)

Thus, the controlling regulations provide a presumption that the Student should be educated in the normal setting, but allow for deviations from the norm based upon appropriate circumstances, and, if clear evidence is available, a determination that partial or full removal is desirable for the welfare of the child or other children. One of the comments published in the Federal Regulations cites an example that

where a handicapped child is so disruptive in a regular classroom that the education of other students is significantly impaired, the needs of the handicapped child cannot be met in that environment. Therefore regular placement would not be appropriate to his or her need

The above comment in the Federal Regulations and the above quoted comment in the State Regulations shows that the needs of other children can be taken into account in deciding the Least Restrictive Environment for a student.

In the present case, there was substantial evidence to show that the Student posed a health risk to other students if the Student was placed in the placement he would be in but for the fact that he carried Hepatitis B. There was ample testimony that the Student did not have good hygiene and he was presently unable to maintain good hygiene. Thus, the Regional Hearing Officer was authorized to find that the normal placement requested for the Student was countermanded due to the welfare of other children.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion there was substantial evidence to support the decision of the Regional Hearing Officer that the placement offered was the Least Restrictive Environment for the Student. All other issues raised by the Student are moot once the decision has been made that the Student's program is the Least Restrictive Environment. The Local Board did not appeal any of the findings of the Regional Hearing Officer. The decision of the Regional Hearing Officer is, therefore,

SUSTAINED.

This 28th day of April, 1987.

L. O. Buckland
State Hearing Officer