



staffed out of special education and placed in a regular classroom. After the Student was staffed out of special education, the Local Board provided the Student with indirect speech therapy. The Student's indirect speech therapy consisted of special care by the regular classroom teacher with respect to the Student's speech problem.

The Student failed the first grade and had to repeat before being promoted to the second grade. When the Student began the second grade, however, he was placed in a reading level which is considered to be on the first grade reading level. At the time of the hearing, the Student was making progress, and had progressed to second grade reading levels, but had not yet mastered the skills necessary to advance to the third grade.

The Local Board presented witnesses who testified regarding the reasons for the Student's academic situation. According to their testimony, the reason the Student was using a first grade reader when he entered the second grade was that the Local Board changed its reading series during the time the Student went from first grade to the second grade. Because the reading series used when the Student entered the second grade was more difficult than the one used when the Student was in the first grade, the company which provided the new reading series recommended starting students back a level. Thus, the Student, and all other students who finished the first grade with him, started in the second grade at a level behind where he finished first grade. The reason the Student had not reached the third grade level reading requirements was simply because he had not accomplished all of the required objectives. Based upon the Student's progress, however, the testimony was that he would meet the necessary requirements for promotion by the end of the year. Additionally, the Student's reading ability was approximately in the middle of his class.

The Local Board presented several witnesses who testified that, in their opinion, the Student did not meet the necessary criteria to be classified as handicapped. The Local Board's interrelated teacher testified that she, the psychologist, the lead teacher, the principal, and the regular classroom teacher all met, discussed the Student records and tests, and, in her opinion, the Student did not meet the guidelines

for special education services. The Local Board's special education director testified that she had reviewed the Student's case and that the Student did not meet the necessary criteria for special education.

No testimony was presented by the parents to support the parents' position that the Student qualified for special education services.

The Regional Hearing Officer issued a decision on May 11, 1987. The Regional Hearing Officer found that the Student was not eligible for special education services, and, if there were any due process violations, they were harmless because the Student is not handicapped.

The parents filed this appeal by letter received by the State Department of Education on June 1, 1987.

### **PART III**

#### **DISCUSSION**

The State Hearing Officer is required to sustain the decision of the Regional Hearing Officer if the decision is supported by substantial evidence and no error of law is shown. State Board Policy JQAA, June, 1984; Georgia Special Education State Program Plan FY 84-86, pg. 51.

In the present case, there was ample testimony, as noted in the factual background above, to support the Regional Hearing Officer's conclusion that the Student was not entitled to special education services. While the Student is not progressing as fast as his parents would like, his slow progression does not appear to be caused by any presently existing handicap.

The parents also contend that the Local Board did not grant them a due process hearing within the time required by law when they first requested a hearing and that the Local Board withheld documents from the parents. The evidence does not support the parents' contentions. It is not clear that the parents demanded a hearing until the time of the instant matter. Although the record shows that the parents

disagree with the Local System, that, in and of itself, does not constitute a request for a hearing. The parents were provided with a copy of their hearing rights and it is apparent from the record that the parents are quite capable of understanding those rights. The parents did not present any evidence to show that the Local Board withheld documents from them.

#### **PART IV**

#### **DECISION**

Based upon the foregoing discussion, the record presented, and the briefs and arguments presented on behalf of the parties, the State Hearing Officer is of the opinion the decision of the Regional Hearing Officer is supported by substantial evidence. The decision of the Regional Hearing Officer is therefore,

SUSTAINED.

This 23rd day of June, 1977.

L. O. Buckland  
State Hearing Officer