



**PART II**  
**FACTUAL BACKGROUND**

The Student is a sixteen-year-old male who has a long history of involvement with special education in the Local System beginning with the third grade at Murdock Elementary School. When the Student was in the fourth grade, he was placed in a special language class for students with severe language disorders. He remained in a similar program for the next three years. Later, he was placed at Nash Middle School where, on May 26, 1983, his IEP called for a self-contained language disorder program, one period with behavior disorder resource, and one period with learning disabilities resource on November 6, 1983, his IEP provided for continued placement in Nash Middle School but provided that he would be in a self-contained language program with behavior disorder resource for two periods and learning disabilities resource for one period. On May 4, 1984, his IEP was revised to provide for a self-contained LD class for five periods with behavior disorder resource and speech language resource for one period each. on November 16, 1984, a new IEP was developed, which placed the Student in the self-contained SED center (hereinafter "Children's Center") that serves the Local Board. The Student remained at the Children's Center for approximately six weeks. He was then arrested for hitting a teacher. He returned to school briefly but, shortly thereafter, the Student's mother placed the Student in Georgia Regional Hospital. The Student's mother next placed the Student in a residential school for emotionally disturbed children (hereinafter "Residential School") where he remained for a year. That program ran from September to June and lasted five days per week. It was determined that his emotional problems were beyond the capacities of the Residential School and he was returned to Georgia Regional Hospital where he currently remains.

Because of dissatisfaction with the placement at Georgia Regional Hospital, the Student's parents approached the Local Board about providing an educational program for the Student. The Local System had the Student evaluated, both by its own employees and by an independent evaluator. The Local System then developed a new IEP on March 20, 1987. The new IEP called for placement in the Local Board's SED center, now at a new location

(hereinafter "Hawthorne"), for the entire school day, a vocational evaluation, individual counseling, and family support. The IEP contained six broadly stated annual goals; e.g., "Participation in school structure (and] routine," and thirty objectives. The Student's parents rejected the proposed placement and requested a hearing. The hearing was held on April 20, April 22, and May 5, 1987.

At the hearing, the Student's father testified about the problems which occurred when the Student was mainstreamed; that the Student did the best academically when at the Residential School and behaved better at the Residential School; that the only place the Student ever learned anything was in a highly structured environment, and that the Student was not in the Children's Center long before he was placed in Georgia Regional Hospital.

A psychiatrist from Georgia Regional Hospital testified that the Student was not doing well in his current place sent; that the Student needed intermediate care in a place less restrictive than the hospital, but with strong structure, safeness, and clear, concrete rules. The psychiatrist testified that he did not think the Student could make it in a community setting; that psychiatric and counseling treatment is necessary; that the Student will regress if he is returned home because he will be sent back to the hospital when he starts antagonizing someone. The psychiatrist testified that residential treatment offered the Student his only chance at leading a normal life and becoming a functional and useful adult. The psychiatrist thought that, outside a residential setting, the Student would be unable to learn skills he could transfer home because the school day is not long enough to teach him to generalize. If the Student were in a therapeutic home, where he would receive psychiatric treatment and then be allowed to go to school, he could learn something in the program offered by the Local Board.

The cottage supervisor who worked with the Student at the Residential School testified that the Student needed smaller classes and a seven-day week program; that the Student was making progress in the Residential School and that the Student needed twenty-four hour

placement to continue his behavior. The educational supervisor at Georgia Regional Hospital testified that the Student was not attending the school program at Georgia Regional Hospital and that the Student would benefit from attending school if you could get him to attend. The chief clinical social worker from Georgia Regional Hospital testified that the Student was brought to the hospital based on an incident where the Student kicked his mother; that the Student needed 24-hour, seven days a week structure in order to maintain himself; that they recommended residential placement because the Student had significant difficulty in terms of relating to peers, required structure, and needed psychiatric consultation; that, in order for the Student to benefit from the psycho—ed program, the Student needs to have a residential program, and that the Student has regressed during his current placement in Georgia Regional Hospital.

The Local Board presented its program coordinator who testified that she taught the Student when he was placed in a self—contained classroom and later worked with the Student and the Student's teacher as program coordinator. The coordinator related that the parents had objected to the school's use of a behavior management program; that the Student made academic improvements, both in the 1982—1983 and 1983-1984 school years, in reading, decoding writing, and spelling; made good grades and had improved in line with his intellectual functioning; and that the March 20, 1987 IEP was appropriate and would provide the Student with educational benefit. The Social Work Coordinator for the Local Board testified that the Student had only been in the Children's Center program for about six weeks; his behavior was within acceptable limits; that the Student pushed a teacher on two occasions with the police being summoned on the second occasion; that the Student returned to the Children's Center and was later sent to Georgia Regional Hospital because of problems in the home, and that the Student did well at school even with the home problem.

The independent evaluator for the Local Board, who is a child psychiatrist, testified that he had evaluated the Student in 1984 and again in 1987; that the Student appeared to have progressed educationally in line with his intelligence; that he recommended the Hawthorne

program from an educational viewpoint because the Student would receive educational benefits regardless of the problems he might have at home, and that placement outside the home would be recommended because of home problems. The adolescent program coordinator for Hawthorne testified the Student was eligible for the severely emotionally disturbed program. The service director for the local mental health center testified that the Student would be eligible for their services: individual therapy, family therapy, and group therapy. The clinical psychologist for Hawthorne testified that, during the time the Student was placed at the Children's Center in 1984, they were able to manage the Student's behavior; the Student received educational benefit; the goals and objectives of the March 20, 1987 IEP were appropriate; the program was designed to meet the goals and objectives; the Student would receive educational benefit from the program, and the Student did not spend enough time in his previous placement in the Children's Center to be evaluated as to his progress on the goals and objectives in the 1984 IEP. The Local Board's educational diagnostician testified that she evaluated the Student and attended the IEP meeting. In her opinion, the Student would receive educational benefits from Hawthorne. The Local Board's consultant for staff services testified that the goals and objectives in the March 20, 1987 IEP were typically the kinds of activities of a structured program, such as the recommended placement could offer, and that the Student would receive educational benefits. The Local Board's director of special education testified that the program offered by the Local Board could meet the Student's educational needs, and that residential placement is only necessary when the educational program is completely undermined by the Student's behavior so that nothing that happens during the school program is carried over.

The Regional Hearing Officer received an extension in the time for his decision and issued his decision on May 30, 1987. The Regional Hearing Officer made the following findings of fact which are relevant to the issues on appeal:

1. Only minimal progress was made toward IEP goals in each successive placement within the local school system.
2. The Student's behavior problems continued at (the Children's Center] and after only a brief time there, he was removed by law enforcement officers for striking a

staff member ... the Student did not derive any educational benefit from this placement ... in respect to the goals stated in the applicable IEP.

3. The Student obtained educational benefit from the special education program at (the Residential School]; however, progress was impaired because of the weekend interruptions.
4. The Student returned to ... his present placement, and, after stabilization, began receiving educational benefit from special education classes there. Sometime around February of 1987, the Student became despondent over his continued hospitalization, according to the attending Psychiatrist, and stopped making educational progress.
5. Georgia Regional Hospital. is a very restrictive, primarily medically therapeutic, environment which is no longer an appropriate placement for this Student under P.L. 94-142.
6. The Regional Hearing Officer finds, based particularly upon the testimony of the expert diagnostician presented by the local school system, that the medical conditions of this particular Student so affect his educational abilities that it is highly unlikely this Student would derive educational benefit from the proposed placement....
7. The Student cannot live at home and derive educational benefit from the proposed placement.
8. The Student needs a constant, uninterrupted and consistent twenty-four (hour] residential placement in order to derive any educational benefit from any special education program.
9. The Student requires a seven-day, twenty four hour residential placement in order to derive educational benefit toward the goals and objectives specified in the present IEP; and not merely for the convenience of the family, nor for the convenience of medical treatment or for medical purposes unrelated to educational needs.

The Regional Hearing Officer stated in his rationale for his decision that, in the abstract, the proposed program was capable of addressing the goals and objectives of the IEP developed for the Student but that he could not decide the case in the abstract. He further stated that, when the Student was “individualized” into the process, given his unique history, it was impossible for the Regional Hearing Officer to conclude that the proposed placement is reasonably calculated to enable the Student to receive educational benefits.

The Local Board timely filed its appeal and brief in support of its position. The parents’ attorney was granted an extension to file her brief, requiring a delay in the decision on appeal.

**PART III**  
**DISCUSSION**

The Local Board contends on appeal that the Regional Hearing Officer's findings and conclusions were not supported by substantial evidence. The Local Board contends the Regional Hearing Officer's findings that go towards the inability of the Local Board to provide a program reasonably calculated to provide educational benefit were not supported by substantial evidence. Additionally, the Local Board contends that the Regional Hearing Officer's findings that the Student needs a constant, uninterrupted, and consistent twenty-four hour residential placement in order to derive any educational benefit from any special education program is not a reasonable conclusion based on the substantial evidence standard. Further, the Local Board contends that the Regional Hearing Officer failed to apply the law correctly, as set out in Hendrik Hudson Central School District v. Rowley, 458 U.S. 176 (1982) and that the Regional Hearing Officer failed to follow the law with respect to the requirement that the Student be placed in the Least Restrictive Environment.

The parents contend on appeal that the findings that only minimal progress was made towards the IEP goals while the Student was in the Local System and that there was no evidence of educational benefit while the Student was at the Children's Center were supported by substantial evidence; and that the evidence supported the decision that residential placement was necessary in order for the Student to benefit from educational services.

The State Hearing Officer is required to sustain the decision of the Regional Hearing Officer if his 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 46, pg. 51.

As both parties recognize in their briefs, the decision of the United States Supreme Court in Rowley provides the guidelines by which the Regional and State Hearing Officers are bound.

In that case, the Supreme Court held that:

We therefore conclude 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.

The determination of when handicapped children are receiving sufficient educational benefits to satisfy the requirements of the Act presents a more difficult problem. The Act requires participating States to educate a wide spectrum of handicapped children, from the marginally hearing-impaired to the profoundly retarded and palsied. It is clear that the benefits obtainable by children at one end of the spectrum will differ dramatically from those obtainable by children at the other end, with infinite variations in between. One child may have little difficulty competing successfully in an academic setting with non-handicapped children while another child may encounter great difficulty in acquiring even the most basic of self-maintenance skills. We do not attempt today to establish any one test for determining the adequacy of educational benefits conferred upon all children covered by the Act. Because in this case we are presented with a handicapped child who is receiving substantial specialized instruction and related services, and who is performing above average in the regular classrooms of a public school system, we confine our analysis to that situation.

The Act requires participating States to educate handicapped children with non-handicapped children whenever possible. When that “mainstreaming” preference of the Act has been met and a child is being educated in the regular classrooms of a public school system, the system itself monitors the educational progress of the child. Regular examinations are administered, grades are awarded, and yearly advancement to his or her grade levels is permitted for those children who attain an adequate knowledge of the course material. The grading and advancement system thus constitutes an important factor in determining educational benefit. Children who graduate from our public school systems are considered by our society to have been “educated” at least to the grade level they have completed, and access to an “education” for handicapped children is precisely what Congress sought to provide in the Act.

The Court also made it clear that:

... the intent of the Act was more to open the door of public education to handicapped children on appropriate terms than to guarantee any particular level of education once inside.

Applying the above standards to the facts of this case, the issue is whether the Regional Hearing Officer’s decision was supported by substantial evidence that the Local Board did not offer an educational program which provided access to specialized instruction and related services which are individually designed to provide educational benefit to the Student. Thus, this case is one of those difficult cases mentioned by the Court in Rowley involving the

determination of when a student is receiving sufficient educational benefits to satisfy the requirements of the Act.

The finding by the Regional Hearing Officer that the Student made minimal progress in the Local System prior to the placement in the children's Center is not supported by substantial evidence in the record. The only testimony that the Student did not receive educational benefit in the Local System was the Student's father's testimony that the Student never learned anything except in a highly structured environment. The only evidence presented that the Student did not receive educational benefit were the records which showed the Student did not master all of his goals on his IEP, and certain records reflecting test scores which the parents contend, in the brief submitted by their attorney, show that the Student did not receive educational benefits. The testimony of the Student's father is a general statement which was contradicted by the specific testimony of the Local Board personnel who worked with the Student. The Local Board's personnel testified that the Student had progressed in line with his intellectual functioning, made academic improvements in many areas, and made good grades. The fact that the Student did not increase his test scores as much as would be desirable does not mean that the educational program was of little benefit. The test scores did improve in some areas and the only expert testimony was that the Student advanced in accordance with his intellectual ability. The fact that the Student did not meet all of his goals and objectives does not mean the Student did not receive sufficient educational benefit. The Student did meet some of the goals and objectives, and other goals and objectives were of the type to be continuing in nature over a long period of time. Nevertheless, the standard to be applied is whether the program is reasonably designed to provide educational benefit. The evidence did not show that, prior to the time the Student was placed in the Children's Center, the Student's program was not reasonably designed to provide him with educational benefit, or that the Student's program failed to provide him with a reasonable educational benefit.

The Regional Hearing Officer's finding that the Student did not derive any educational benefit from the placement in the Children's Center is not supportive of the conclusion that the Local Board could not provide the Student with an appropriate education. The Student was only in the Children's Center for a period of approximately six weeks. There was no testimony to show that the six week period was sufficient to make a determination that the placement in the Children's Center was not appropriate. Additionally, the Local Board was working with the Student's mother to revise and improve the Student's UP. It is impossible at this point to predict what the result would have been had the Student remained in the Children's Center.

There also was not substantial evidence in the record to show that the program proposed at Hawthorne was not reasonably calculated to provide the Student with educational benefit. There were no objections to the goals and objectives in the March 20, 1987 UP developed for the Student. The only testimony that the goals and objectives of the IEP could not be met was the testimony of the psychiatrist that, outside a residential setting, the Student would be unable to learn skills he could transfer home because the school day is not long enough to teach him to generalize. This testimony would tend to show that one of the goals and objectives of the IEP might not be attainable. The fact that one individual speculates that one objective might not be accomplished does not mean that there is substantial evidence that the Student would not receive a reasonable educational benefit by attaining the other goals and objectives.

It is clear that this case is one in which the Student can be provided an appropriate education in a highly structured environment provided within the normal school day but that the Student may have behavior problems after the school day ends which prevent the Student from living at home. The Local Board is required to provide the Student with a program which is reasonably calculated to provide the Student with educational benefits, but it is not responsible for controlling the Student's behavior after the school program is over. The fact that a Student may act in a manner outside the school program which removes him from the benefit of the program offered by the Local Board does not mean the Local Board has failed to offer the

Student an appropriate program. One of the basic factors the Local Board has to consider in determining a proper placement is the Act's mandate that the Student must be placed in the least restrictive environment. While least restrictive environment does not preclude residential placement, there should be compelling evidence that a student will not obtain any educational benefits from a more normal program. The State Hearing Officer does not find substantial evidence in the record to show that the Student will be unable to obtain educational benefits outside a twenty-four hour residential program.

If the Student is placed in a residential institution due to the inability of the family to maintain the Student at home, the Local Board may still have an obligation to insure that the Student receives an appropriate education. This issue has not been raised in the present case and, therefore, is not decided.

#### **PART IV**

#### **DECISION**

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer that the Local Board did not offer the Student an appropriate educational placement, is not supported by substantial evidence. Therefore, the decision of the Regional Hearing Officer is,

**REVERSED.**

This 5th day of August, 1987.

**L. O. BUCKLAND**  
State Hearing Officer