

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES L.,	:	
	:	
Appellant,	:	CASE NO. 1987-29
	:	
vs.	:	
	:	
RICHMOND COUNTY BOARD	:	
OF EDUCATION,	:	DECISION OF STATE
	:	HEARING OFFICER
Appellee.	:	

PART I

SUMMARY

This is an appeal by the parents of James L. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Student is not a handicapped student within the meaning of the Education for All Handicapped Children's Act of 1975 (hereinafter "the Act"). The parents contend the Student is not being given a Free Appropriate Public Education, due process timelines were not met, and that documents were withheld from them. The Local Board contends the Student is not handicapped and the decision of the Regional Hearing Officer should be upheld.

PART II

FACTUAL BACKGROUND

The Student is a male who, at the time of the hearing, was in the seventh grade. In the Student's parents' opinion, the Student scored poorly on tests often enough to indicate a problem which they felt warranted special education. When the local Board refused to place the Student in special education classes and provide related services, the parents requested a hearing.

At the hearing, the Student's parents presented the Student's records and *test* scores. The Student's records showed that he had been placed in special education in the past. The Student's test scores also showed that he occasionally made poor grades on *tests*.

The Local Board presented teachers who had taught the Student. They testified the Student was performing as an average Student and was progressing on grade level. The Local Board further presented an administrator in its special education department who testified the Student did not qualify for special education services.

The Regional Hearing Officer issued his decision on July 31, 1987, and the Student's parents filed this appeal on August 7, 1987.

PART III

DISCUSSION

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. 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. While the Student is not scoring as well on tests or progressing as fast as his parents would like, his slow progression does not appear to be caused by any presently existing handicap which would qualify the Student for special education services.

The Student's parents have failed to recognize that special education under the Act is not the same as a remedial education program. Under the Act, only children with a handicapping condition which impairs their learning so that they need special education

services are entitled to protection under the Act. The Student's parents understandably desire that the Student receive as much help as possible. In the absence of a demonstrable handicapping condition which impairs the Student's learning, however, the Student is not eligible for services under the Act.

The parents also contend that the representatives of the Local Board misplaced papers, that the Regional Hearing Officer erred in refusing to admit a doctor's report, that the Local Board did not advise the parents of their right to legal representation, that the evaluations performed were not appropriate, that the Regional Hearing Officer was not independent, that the Regional Hearing Officer did not issue his opinion in a timely manner, and that one of the Student's records was withheld from them. Each of these contentions will be addressed only briefly because at the hearing they either did not arise as issues at all, or only arose in a peripheral manner. The general rule on appeal is that issues not raised at a hearing will not be heard on appeal. While hearings and appeals under the Act are not subject to the general court rules, facts to support the issues presented on appeal must be presented at hearings, and the opposing party given a fair opportunity to rebut those facts in order for the issues to be considered on appeal.

The record simply does not support the Student's parents' contentions that the representatives of the Local Board misplaced the Student's papers, or that such would warrant reversal of the Regional Hearing Officer's decision if it were supported in the record, that the Local Board did not advise the Student's parents of their right to legal representation, that the evaluations performed were not appropriate, or that the Regional Hearing Officer was not independent. These allegations, therefore, are totally without merit.

The Student's parent's contentions that the Regional Hearing Officer refused to admit a doctor's report, that the Regional Hearing Officer did not issue his decision in a timely manner and that one of the Student's records was withheld from them are contentions which, at least, have some basis in the record.

None of these three contentions, however, warrant reversal of the Regional Hearing Officer's decision. The refusal to admit the doctor's report was justified under the requirement that evidence must be exchanged between the parties five days prior to the hearing, which was not done in this case. Additionally, the evidence to be provided by the doctor's report would not have been sufficient to show that the Student was in need of special education. A doctor's statement of a handicapping condition does not, in itself, mean that a Student is in need of special education services. Each of the Local Board's experts testified that the Student was not in need of special education services and the Student's parents did not present experts to contradict their testimony.

The Student's parents' contention that the decision was not issued in a timely fashion appears from the face of the record to be correct. This contention does not warrant reversal of the Regional Hearing Officer's decision, however, but is a matter for consideration by the State Department of Education. It is possible that a legitimate explanation exists for the delay. In the event there is not a legitimate explanation for the delay, then the State Department of Education must still determine if any action is necessary to prevent such delays in the future. Finally, the Student's parents' contention that records were withheld from them does not warrant reversal of the decision of the Regional Hearing Officer. It appears that a legitimate question concerning confidentiality existed that justified the principal's not releasing to the parents a questionnaire which had been submitted by the Student to the school counselor, at least until the principal had the opportunity to seek advice of counsel. Once the principal received the advice of counsel, the record was released and no harm was done.

PART IV
DECISION

Based upon the foregoing discussion, the record presented, and the briefs 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 10th day of September, 1987.

L. O. BUCKLAND
State Hearing Officer