

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MUSCOGEE COUNTY BOARD OF EDUCATION, APPELLANT	:	
	:	
	:	CASE NO. 1987-30
	:	
V.	:	
	:	
	:	
HENRY A.,	:	
	:	DECISION OF STATE
	:	HEARING OFFICER
Appellee.	:	

PART I

SUMMARY

This is an appeal by the Muscogee County Board of Education (hereinafter “Local Board”) from a decision of the Regional Hearing Officer that the Local Board must provide cued speech as Henry A.’s (hereinafter “Student”) primary mode of communication, and assure that the individuals who teach, interpret, or provide speech therapy to the Student do so with proficiency. The Student cross-appeals the fact that the Regional Hearing Officer found appropriate the placement in the self-contained classroom for the hearing impaired, with speech therapy and mainstreaming for music and physical education, provided for in the Student’s Individualized Education Plan (hereinafter “IEP”).

The Local Board contends the Regional Hearing Officer used the wrong standard of review, that the determination of how to provide a free appropriate education to the Student should not be based upon parental decision, that the decision is contrary to the evidence, and that the decision was based upon inadmissible evidence. The Student contends the Regional Hearing Officer’s decision was correct except to the extent the

Regional Hearing officer did not properly consider the standard for Least Restrictive Environment.

PART II

FACTUAL BACKGROUND

The Student is a nine year old male who suffers from a bilateral severe-to-profound, sensori-neural hearing loss. The Student has been enrolled in public and private school programs since he was nine months old. Initially, the programs the Student attended used sign language as the means of communicating with the Student. When the Student was approximately four years old, his mother became interested in the use of cued speech for the Student's mode of communication. Cueing involves the use of hand-shapes with the ongoing speech to clarify the spoken message. Cueing is not intended to be a substitute for spoken language as is sign language. The private school attended by the Student would not agree to use cued speech rather than sign language, but the Student's mother had the Student provided speech therapy by an individual who cued to the Student. When the Student entered the program offered by the Local Board, he was placed in a self-contained classroom for the hearing impaired. The Student's mother made the Local Board aware of her desire to have the Student communicate using cues instead of sign language, and that the use of cues was the primary method of communicating with the Student at home. The Student has been provided a program, during his tenure within the Local System, in which the Student's teachers attempted to cue to the Student, but if the Student did not understand, the Student's teachers would then sign to the Student.

At the Student's latest IEP meeting, the Local Board's IEP provided for a self-contained placement using signing as the exclusive method of communication. The parent then requested a hearing contending that the program offered was inappropriate.

At the hearing, testimony was offered which showed that the Student had made insignificant educational progress as measured by the standardized tests the Student had taken. The Student's teachers, however, testified that the Student had made good grades and consistent progress. It was clear, however, that the teachers were testifying the Student was performing well only in relation to his ability to progress at his own rate; i.e., the Student was not being compared to other students who were not handicapped.

The Student's parents also presented testimony at the hearing that the individuals who cued to the Student were not proficient in cueing. This was done in the form of expert testimony from a person who had observed the Student's teacher, and in the form of testimony from the Student's mother. The Student's teacher testified she had had some training in cueing and was capable of cueing to the Student.

The Regional Hearing Officer found that it was crucial to the Student's educational development to have the school and the family using the same communication method. He further found that the evidence showed that the teachers who cued to the Student were not proficient enough to provide the Student with a meaningful educational benefit, and that the testimony from the Student's teacher, that the Student seemed to prefer to communicate with them in signs, was understandable since the teacher had a history of using signs with the Student, and the teacher had limited proficiency in using cues.

The Regional Hearing Officer then concluded:

... that cued speech would better meet the needs of the student than sign language, particularly in light of the consistent cueing that is now done at home and the need for consistency in the student's communication. I, therefore, direct the school system to provide cued speech as the student's primary mode of communication and to assure that the individuals who teach, interpret, or provide speech therapy to the student do so with proficiency.

The Regional Hearing Officer further found:

.that the student's articulation and language skills are severely impaired and that he has a low language level and poor receptive language skills. His reading skills are weak, ...

and thus concluded that the proposed placement in a self-contained classroom for the hearing-impaired, with speech therapy and mainstreaming for music and physical education was appropriate.

The Regional Hearing Officer issued his decision on July 22, 1987 and the Local Board filed this appeal on August 21, 1987. The Student's attorney requested a delay in the time for filing a responsive brief and a delay in the issuance of this decision.

PART III

DISCUSSION

The Local Board contends on appeal that the Regional Hearing Officer erred in four ways. First, the Local Board contends the Regional Hearing Officer erred because he used an incorrect standard in making his decision. Second, the Local Board contends the Regional Hearing Officer erred because he improperly allowed the parental decision to use cueing in the home to determine the method necessary to provide the Student with an appropriate education. Third, the Local Board contends the evidence shows the Student has made grade level progress and, therefore, the decision is contrary to the evidence. Fourth, the Local Board contends the Regional Hearing Officer erred when he accepted into evidence certain publications or articles without the proper support and foundation.

The Student's parents contend, in addition to opposing the arguments of the Local Board, that the Regional Hearing Officer erred in not considering the Least Restrictive Environment for the Student.

The Local Board's first argument is that the Regional Hearing Officer erred in the standard he applied because he stated that cued speech would better meet the needs of the Student than sign language, when the appropriate test is to determine whether the Student made grade level progress and received an educational benefit under the IEPs written for the Student where signing was used.

The Local Board is correct that the proper test is not whether the program sought by the Student's parents is better than the program offered by the Local Board, but whether the program offered by the Local Board is reasonably calculated to provide the Student with educational benefit. The Regional Hearing Officer's statement, "that cued speech would better meet the needs of the Student than sign language," creates confusion as to whether the Regional Hearing Officer was requiring the Local Board to provide more services than were shown to be necessary for an appropriate program. Upon reading the entire decision of the Regional Hearing Officer, however, it is apparent that the Regional Hearing Officer concluded that the program offered by the Local Board was inappropriate because the Student will be subjected to communicating in sign language at school, and to communicating by cueing at home. The Student has been consistently confused by these different methods of communication over the years and the confusion has resulted in little educational progress. Additionally, the Regional Hearing Officer found that the cueing program offered by the Local Board's fourth and final contention is that the Regional Hearing Officer erred when he accepted into evidence certain publications or articles without proper foundation or support, thus relying on hearsay to make his decision. Hearings under the Education for All Handicapped Children's Act of 1975 (hereinafter "the Act") are not subject to the strict rules of evidence of court proceedings. While hearsay evidence should be considered to be less credible than direct evidence, it is not prohibited. The Regional Hearing Officer quoted from the articles to support his finding that the Student should be placed in a self-contained classroom rather than in a less restrictive environment. The articles support the Regional Hearing Officer's decision that the Student should be placed in a self-contained classroom since they do recommend against placement in the regular classroom when a student does not read well, and when the Student cannot be reasonably successful in his attempts to communicate.

The evidence showed the Student cannot read well and is not reasonably successful in his attempts to communicate. Additionally, there was ample evidence to show that the Student's communication levels are not sufficient, even with a qualified individual to translate for him, to enable him to be successful in a regular classroom. The State Hearing Officer, therefore, concludes that the Regional hearing Officer did not improperly rely on hearsay evidence, and the evidence supports the decision that the Student should not be placed in a regular classroom. The Local Board's fourth contention and the Student's argument that the Regional Hearing Officer failed to consider the least restrictive environment are not supported by the Act or the evidence.

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 is substantial evidence to support the decision of the Regional Hearing Officer. The decision of the Regional Hearing Officer, therefore, is

SUSTAINED.

This 6th day of October, 1987.

L. O. BUCKLAND
State Hearing Officer