

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANDREW A.,

Appellant,

v.

**COBB COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 1988-4

**DECISION OF STATE
HEARING OFFICER**

PART I

SUMMARY

This is an appeal by the parents of Andrew A. (“Student”) from a Regional Hearing Officer’s decision that the Student did not need a residential placement, that the Local Board did provide a free appropriate education to the Student for the school years 1985-1986 and 1986-1987, and that the Individualized Education Plan (“TEP”) proposed by the Local Board for the 1987-1988 school year must be amended to provide additional services for the Student’s needs.

PART II

FACTUAL BACKGROUND

The Student in this case has a rare handicapping condition known as Prader-Willi Syndrome. This condition results in the Student having an insatiable desire to eat. The Student also exhibits extreme tantrums and destructive behavior. Additionally, the Student tests in the mildly mentally handicapped range and is hypertonic. These characteristics are typical of children with Prader-Willi Syndrome. The Local Board placed the Student in a mildly mentally handicapped class during the 1984-1985 and 1985-1986 school year. In the 1985-1986 school year, the Student was placed on medication and removed from mainstream classes due to his

behavior problems. At the June, 1986, staffing for the Student, the Local Board decided the Student should be placed in the program for the mildly mentally handicapped, that additional psychological evaluations were necessary, and that the additional psychological evaluations should be completed during the summer. A committee was to be convened in August, 1986, to address the psychological. The Student's parents consented to the placement offered with the understanding that the psychological would be performed. The psychological was performed but was not received by the system prior to the beginning of school for the 1986-1987 school year. The Student's parents had been considering private residential placement for approximately one year, and in August, 1986, they were informed that an opening in the private school they were considering was available. Instead of placing the Student in the placement offered by the Local Board, the parents placed the Student in the private residential placement. The Student remained in the private residential placement for the 1986-1987 school year and for the fall quarter of the 1987-1988 school year.

In the summer of 1987, the parents requested a due process hearing to address reimbursement for the expense of the private residential placement, and payment for future placement in the private residential placement. The hearing was held over the course of several days. Additionally, deposition testimony was taken. Testimony was presented on behalf of the Local Board that the Student made academic and behavioral progress in his last year of school in the local system and that the IEP proposed for the 1986-1987 school year was appropriate. Testimony was presented on behalf of the parents that the Student needed a twenty-four hour a day residential placement. The testimony that the Student needed twenty-four hour a day residential placement was based upon the witnesses' opinions that the Student needed structure and consistency for health reasons to avoid his eating compulsion, and for educational reasons because the Student's behavior and learning was closely tied with his constant desire to forage for food.

The Regional Hearing Officer found that the Student was not in physical or emotional danger during the 1985-1986 school year and had not failed to make academic progress during that year. Additionally, the Regional Hearing Officer found that the IEP proposed for the 1987-1988 school year was inadequate in that it did not address the diet, exercise or behavior needs of the Student, but the Student did not need twenty-four hour a day residential placement.

The Regional Hearing Officer concluded that the residential placement requested by the parents was too restrictive, that the Local Board did provide, or offer, an appropriate education during the school years 1985-1986 and 1986-1987, and could provide an appropriate education now. He, however, also concluded that the proposed IEP for the 1987-1988 school year needed to be amended to provide services for the Prader-Willi Syndrome needs, specifically the hypertonia, diet needs, and his emotional disturbance.

The Regional Hearing Officer's decision was issued on December 23, 1987, and the parents filed this appeal on January 13, 1988. A request for oral argument was made and granted, necessitating a delay in the time for a decision from the State Hearing Officer.

PART III

DISCUSSION

The Student contends on appeal:

1. There was not substantial evidence to support the Regional Hearing Officer's decision that the 1985-1986 or 1986-1987 IEP's were appropriate.
2. The Regional Hearing Officer erred in not considering the need for twelve months of schooling.
3. The fact that the Regional Hearing Officer ordered services to be provided which were not provided in 1985-1986 or offered in 1986-1987 requires reimbursement for the private placement.
4. The placement in a residential school is not more restrictive than the one offered by the Local Board.

5. The Regional Hearing Officer ignored the burden on the Local Board to establish that there would be no harm to the Student in making the change in placement, and inappropriately placed the burden of proof on the family concerning services.

The Local Board contends that there is substantial evidence in the record to support the finding of the Regional Hearing Officer that the Local Board can offer an appropriate education. The Local Board contends that the expert witnesses for the Local Board testified the program offered was appropriate, and that they testified the Student would receive educational benefit from the program. The Local Board further contends that the witnesses for the parents who contend the Student needs residential placement had, contrary to the intent of the Education for All Handicapped Children Act, 20 U.S.C. § 1401 et. seq., predetermined opinions that all Prader-Willi Syndrome children needed residential placement.

The Local Board further contends there is substantial evidence to support the finding of the Regional Hearing Officer that the programs offered the Student in the 1985-1986 and 1986-1987 school years were appropriate. The Local Board contends its expert witnesses testified the Student made progress and that the parents' failure to reject the program indicates they approved of the program.

The decision of the Regional Hearing Officer, that the Local Board can provide an appropriate program, is supported by substantial evidence. The Local Board's witnesses, who were educational experts, testified they could meet the Student's needs. The testimony of the witnesses for the Student's parents indicated that certain other elements needed to be included in order to meet the Student's unique educational needs. The Student needs services for his emotional condition, hypertonia, and his dietary needs. While the testimony of the witnesses for the Student's parents was that the Student's needs had to be met in a twenty-four hour a day residential placement, the evidence presented did not demand a finding that the Student's needs could only be met in such an environment. The testimony was that the residential program was set up with a structured school program, activities, and a dorm type residential life. Such a

program is not totally different than one that could be designed with the Student remaining at home, in a much less restrictive environment than the residential placement desired by the Student's parents.

The Regional Hearing Officer's decision that the Local Board offered the Student an appropriate education for the years 1985-1986, and 1986-1987 was not supported by substantial evidence. The Local Board failed to offer an appropriate education for the years 1985-1986, 1986-1987 and 1987-1988. The program did not address the Student's unique needs and the Student did not make any educational progress, nor did the program provide any educational benefit to the Student. The only perceptible educational advance made by the Student was the ability to pick out one inconsistent sentence from a group of sentences. Such an advance does not constitute a program which provides an educational benefit to a Student who will likely never be self sufficient. The Student's program must be designed to provide some useful educational goals and objectives, and include the Student's unique dietary needs as well as the Student's unique emotional needs. The program that was actually offered was only designed to deal with the Student as a typical mildly mentally handicapped student, which has been shown to be inappropriate.

The fact that the program offered by the Local Board during the previous school years was inappropriate does not automatically warrant reimbursement for the costs of residential placement, under the guidelines set forth in Burlington School Comm. v. Mass. Dent. of Ed., 471 U.S. 359, 105 5. Ct. 1996 (1985), and previous decisions of the State Hearing Officer. Reimbursement is generally not authorized where parents accept the terms of the IEP without complaint and then unilaterally place the Student in a private placement. Crisp County Board of Education v. Lauren T., Case No. 1986-28. It is inequitable to allow a party to stand by without objecting, accept the program offered, and then seek reimbursement for private placement. If the parents had requested a hearing earlier, the IEP could have been modified as proposed by the Regional Hearing Officer, thus avoiding the residential placement. The Regional Hearing

Officer, therefore, was correct in not awarding reimbursement for residential placement prior to the time the Student's parents requested a hearing.

The Student's parents, however, should receive reimbursement for private placement for the 1987-1988 school year from the time the parents requested the hearing to the time the Local Board offered an appropriate program as reflected by the modifications imposed by the Regional Hearing Officer.

[P]arents who unilaterally change their child's placement during the pendency of review proceedings, without the consent of state or local school officials, do so at their own financial risk. If the courts ultimately determine that the IEP proposed by the school officials was appropriate, the parents would be barred from obtaining reimbursement for any interim period in which their child's placement violated §1415(e) (3).

Burlington School Comm. v. Mass. Dept. of Ed., 471 U.S. 359, 373—74, 105 S. Ct. 1996, 2005 (1985) . Conversely, if it is determined that the IEP proposed by the school officials was not appropriate, then the parents should be permitted to obtain reimbursement for any interim period they have placed their child in a private residential placement contrary to the desires of the local school officials. On June 25, 1987, the parents requested a hearing. At that point in time, the Local Board failed to offer the Student an appropriate education, as is reflected by the fact that the Regional Hearing Officer had to order the IEP to be redesigned to address the Student's unique needs. The Student's parents had made the employees of the Local Board aware that the program offered by the Local Board was unacceptable and that they sought residential placement. At the hearing, the parents demonstrated that the residential placement was, except for its restrictiveness, an appropriate placement. The Local Board failed to design a program to address the Student's unique needs even though the Student was in their programs during a time when the Student made negligible progress. Thus, under Burlington, the equities demand that reimbursement from June 25, 1987, until the Local Board modifies the IEP consistent with the Regional Hearing Officer's decision, should have been ordered.

PART IV

DECISION

Based upon the foregoing, the decision of the Regional Hearing Officer is sustained except for that portion that denies reimbursement to the Student's parents for the costs incurred in providing private residential services from June 25, 1987, until the program, under an IEP revised in accordance with the directions of the Regional Hearing Officer, is made available to the Student.

This 26th day of April, 1988.

L. O. Buckland
State Hearing Officer