

STATE BOARD OF EDUCATION

STATE OF GEORGIA

**BURKE COUNTY BOARD
OF EDUCATION,**

Appellant,

v.

BRANDON C.

Appellee.

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**CASE NO. 1988-5
DECISION OF STATE
HEARING OFFICER**

PART I

SUMMARY

This is an appeal by the Burke County Board of Education (“Local Board”) from a decision of a Regional Hearing Officer that the educational program offered by the Local Board would not allow Brandon C. (“Student”) to benefit from special education, and that the Student should remain placed in a private residential placement. The Local Board contends on appeal that the Individualized Education Plan (“IEP”) prepared by the Local System should not be overridden by the Regional Hearing Officer and that the Regional Hearing Officer’s decision was not supported by substantial evidence. The Student’s parents contend that a Regional Hearing Officer is within his authority to order changes to the IEP and that the decision of the Regional Hearing Officer is supported by the testimony of the witnesses from the private residential placement. The decision of the Regional Hearing Officer is reversed.

PART II

FACTUAL BACKGROUND

The Student is profoundly mentally handicapped and admittedly requires special education services under the provisions of the Education for All Handicapped Children Act, 20

U.S.C. § 1401 et. seq. (“EHA”). The Student’s parents lived in Screven County prior to moving to Burke County. The Screven County School System placed the Student in the private residential placement, apparently because they did not feel they had the facilities to educate the Student. When the family moved to Burke County in January, 1987, the Local Board agreed to continue placement in the private residential facility.

On October 13, 1987, the Local Board convened an IEP meeting. The IEP meeting resulted in an IEP in which the Local Board offered the Student an education in the Local System in its profoundly mentally handicapped program rather than in the private residential facility. The parents refused to consent to the Local Board’s proposed placement and requested a hearing.

The hearing was held on December 7, 1987. At the hearing, the Local Board presented a witness who testified she had observed the Student in the private residential program, that the Local Board had students in its programs similar to the Student, that the Local Board’s program was superior to the private school program, and that she would recommend the Student be placed in the Local Board’s program. The Local Board also presented its teacher of the moderately mentally handicapped, profoundly mentally handicapped and severely mentally handicapped, who testified, based upon the information given to him, that the Student should be placed in the Local Board’s classes, and live at home, rather than being placed in the private residential placement.

The parents presented witnesses, including the Student’s mother, who testified regarding the severity of the Student’s condition and the quality of the private residential facility. The Student’s IEP showed that he needs improvement in his visual motor skills, self-help skills, communication skills, and motor skills. The Local Board proposed to meet these needs through its profoundly mentally handicapped program, with occupational and physical therapy, speech

evaluation, and adaptive physical education.

The Regional Hearing Officer issued his decision on December 30, 1987, and found that the program offered by the Local Board would not allow the Student to benefit from special education because the Student's handicapping conditions were overwhelming. The Regional Hearing Officer then ordered the Local Board to maintain the private residential placement.

On January 18, 1988, the Regional Hearing Officer amended his order to add as exhibits to the record the IEP developed by the Local Board, the eligibility report developed by the Local Board, and the parental consent for placement form.

The Local Board timely appealed the decision. The attorney for the Student encountered difficulty in preparing for the appeal and requested several delays in submitting briefs. These delays were granted, contingent upon a delay in the decision of this hearing officer.

PART III

DISCUSSION

The Local Board maintains on appeal that there is no substantial evidence to support the decision of the Regional Hearing Officer, and the decision misinterprets Board of Educ. v. Rowley, 458 U.S. 176 (1982).

The State Hearing Officer is required to support the decision of the Regional Hearing Officer if there is substantial evidence to support the Regional Hearing Officer's decision. State Board Policy JQAA, (June, 1984); Georgia Special Education State Program Plan FY 84-86, pg. 51.

In Rowley, supra, the Supreme Court established a two-step process for courts to follow

in reviewing a case brought under the EHA. The first step is an inquiry into whether the local school system has complied with the procedural requirements of the EHA. The second step is to determine whether the proposed program is reasonably calculated to “enable the child to receive educational benefits.” Rowley, at 206-107.

There have not been any complaints that the procedural requirements of the EHA were not followed. The first Rowley step, therefore, has been satisfied. The next step is to determine if the program proposed by the Local Board is reasonably calculated to provide the Student with educational benefits.

In discussing educational benefits, the Rowley court observed that a local system was not required to provide the best education possible, but it did have to provide an educational program that provides “access to specialized instruction and related services which are individually designed to provide educational benefit to the handicapped child.” Rowley at 198-201.

In the present case, the Local Board was required to offer the Student an appropriate education pursuant to a valid IEP. The evidence presented showed that the Local Board offered an IEP that was substantially similar to the educational program offered in the private residential placement. There was no evidence that the Local Board could not provide the program it offered. The Regional Hearing Officer failed to make any findings of fact that would indicate any deficiency in the program offered by the Local Board. The record is also void of any showing that the program offered by the Local Board was an inappropriate program for the Student. The witnesses presented for the Student’s parents discussed the virtues of the private placement, but they did not establish any facts to show that the program offered by the Local Board was inappropriate. The Local Board presented its special education director and a teacher for the mentally handicapped who testified the IEP would be best implemented in the Local System. None of this testimony was contradicted.

The Regional Hearing Officer cited Kruelle v. New Castle County School District, 642 F.2d 687 (3d Cir. 1981) as support for the decision to place the Student in the private residential school. Based upon this, the Regional Hearing Officer apparently found that full time residential placement is necessary for educational purposes rather than for medical, social or emotional concerns. In Kruelle, the handicapped student experienced severe stress reactions and the court held that the district court could find that the student required more supervision than he was offered by the local school system. The court also found that the student suffered from regression when he was not in a residential program. The court then held that residential placement is encompassed within the term “special education”.

The Local Board had the burden of presenting evidence it could provide an appropriate program to meet the Student’s educational needs. Based upon the testimony of the Local Board’s witnesses, the Local Board met its initial burden. Once the Local Board presented a prima facie case that it could offer an appropriate program, the parents were required to present evidence that the program offered by the Local Board did not meet the Student’s needs. However, no such evidence was presented. The witnesses for the parents simply testified about the Student’s condition and the benefits of the private residential placement. There was no evidence the Student would regress if he were placed in the proposed program, nor was there any evidence the Student would be unable to obtain educational benefit from the proposed program. Unlike Kruelle, it was not shown that a residential program was essential in order for the Student to obtain any educational benefit. There was, therefore, no evidence to support the decision of the Regional Hearing Officer that the Local Board failed to offer the Student an appropriate education.

PART IV

DECISION

The decision of the Regional Hearing Officer, that the Local Board did not offer the Student an appropriate education, was not supported by substantial evidence. The decision of the Regional Hearing Officer, therefore, is

REVERSED.

This 9th day of May, 1988.

L. O. Buckland
State Hearing Officer