STATE BOARD OF EDUCATION

STATE OF GEORGIA

GLYNN COUNTY BOARD OF EDUCATION,	)	
Appellant,	)	**CASE NO. 1988-9**
v.	)	
BRYAN B.,	)	**DECISION OF STATE HEARING OFFICER**
Appellee.	)	

PART I

SUMMARY

This is an appeal by the Glynn County Board of Education from a decision by a regional hearing officer that the Glynn County School System ("Local System") could not provide Bryan B. ("Student") with a free appropriate public education and an order that the Student should be placed in a private residential facility. The decision of the Regional Hearing Officer is reversed.

PART II

BACKGROUND

At three years of age, the Student was diagnosed as having organic brain syndrome with moderate mental retardation, speech disorder, and unsocialized aggressive reaction of childhood. He is now eighteen years of age. His behavior is characterized by incidents of undirected rage where he strikes out at anyone or anything near him. These incidents of rage occur because of frustration that results from the Student imposing unattainable goals upon himself. The pattern of outbursts has been evident throughout his life. While he was young, the Student was controllable, but at eighteen years of age, it takes four adults to adequately physically control him when he goes into a period of rage.

The Student initially attended public schools, but his behavior deteriorated to the point where his parents withdrew him and began teaching him at home when he was twelve years old. The home teaching was approved by the states in which the family lived during that period. The Student made good progress in learning how to read, write, and do arithmetic while receiving instruction in the home. His behavior, however, continued to deteriorate. At the end of three and one—half years, the home teaching was ended and the Student was admitted to a residential program in June, 1985. He remained in the residential program for five months, and then returned home. He resided at home from November, 1985, through May, 1986.

From May, 1986, until December, 1986, the Student was admitted to and released from a series of hospitals and schools. Finally, on December 1, 1986, the Student was admitted to Oconomowoc Developmental Training Center ("ODTC"), a residential facility in Wisconsin that provided twenty—four hour supervision. The Student's family moved to Georgia in January, 1987, but the Student remained in ODTC. In April, 1987, during one of his periods of rage, he had a pencil in his hand and stabbed a teacher. The Student was then provided with one-to-one supervision. He was finally dismissed from ODTC on September 21, 1987, because the facility was not licensed to place restraints on its students and, therefore, could no longer handle the Student. On October 1, 1987, the Student was transported to his parents' home in Georgia where he has since remained without receiving any instruction or services.

The Local System was contacted in December, 1986, by the Student's parents before they moved to Georgia. The parents asked whether the Local System could provide services for the Student and they were advised that services were not available.

Two individualized education program ("IEP") meetings were held during 1987. The first meeting was conducted by the Local System and the parents in January, 1987, and the Local System agreed that placement at ODTC should be continued for six months. In July, 1987, another IEP meeting was conducted, and the Local System again agreed that placement should

be continued for another six months at ODTC. During both of these meetings, in January and July, 1987, the Local System adopted the observations and recommendations that were on file and did not make its own observation or evaluation of the Student.

Shortly after the July, 1987, IEP meeting, the Student's parents were informed by ODTC that the Student would soon be dismissed because ODTC was no longer able to provide services to the Student. After receiving the notice, the parents requested placement by the Local System.

The Local System told the parents that an evaluation of the Student was necessary in order to determine an appropriate placement. The Student's parents objected to an evaluation being conducted while the Student was at ODTC, and the personnel at ODTC agreed that an evaluation would be inappropriate. The Student's parents took the position that ample evaluations had already been conducted and there was no need for additional evaluations in order to provide the Student with an appropriate educational program.

After the Student moved to Glynn County, the Local System conducted an evaluation of the Student. This was done in November, 1987, in preparation for an IEP committee meeting that was held on December 1, 1987. The Student's parents objected to some of the goals proposed for the IEP and to the proposed placement of the Student in a self-contained class in the psycho-educational center after a period of adjustment in the home with home instruction. The Student's IEP was not completed at the meeting and the Student's parents said they wanted to review the goals and suggestions.

The Student's parents then requested a hearing before a regional hearing officer. The hearing was held over a three day period between January 7, 1988, and January 14, 1988. Prior to the January 7, 1988, hearing, the Regional Hearing Officer entered an order that required the Local System to provide the Student with six hours per day of educational services in his home during the pendency of the hearing process.

At the conclusion of the hearing, the Regional Hearing Officer found that a psycho-educational center could not provide the necessary treatment required by the Student because he "is an 18 year old, 200 pound young man with a neurological disorder." Because of this, the Regional Hearing Officer apparently found that the Student requires "a residential setting for neurologically impaired youth, having a multidisciplinary program of high structural [sic], confident staff, a strong behavior model, strong familiarity with brain injured children and able to deal with medications, seclusions, and restraint." (Decision, p. 12). The Regional Hearing Officer found that the Local System's proposed program had glaring defects because it would require one of the parents to be present in the home at all times, the plan isolates the Student totally, and, because there are no time lines, the Regional Hearing Officer stated, "it is conceivable [the Student] would never be with other students." (Decision, p. 13).

The Regional Hearing Officer held that the Local System had failed to show by a preponderance of the evidence that the proposed IEP was appropriate. The Regional Hearing Officer then ordered the Local System to place the Student at the Healthcare Rehabilitation Center in Austin, Texas, ("Healthcare") "and with that school, develop an IEP for the remainder of the school year." (Decision, p. 14). Additionally, the Regional Hearing Officer held that the interim order was incorrect and ordered the Student to be placed at Healthcare during the pendency of the hearing process.

The Local System appealed the decision of the Regional Hearing Officer on several grounds. Primarily, however, the Local System complains that the Regional Hearing Officer erred as a matter of law in holding that it could not provide the Student with a free, appropriate public education, and in holding that the Student should be placed in a private residential program in Texas.

Following the appeal by the Local System, the Student's parents filed a petition with the United States District Court for injunctive relief to seek enforcement of the Regional Hearing Officer's decision that the Student should be placed at Healthcare. The District Court entered an order that required the Local System to place the Student at Healthcare pursuant to the provisions contained in 34 C.F.R. § 300.513.

PART III

DISCUSSION

The Regional Hearing Officer found that the Local System's proposed placement was inappropriate. The Local System maintains that the Regional Hearing Officer ignored the testimony regarding the appropriateness of the program and overlooked the decisions of the United State Supreme Court in Irving Ind. School DST. v. Tatro, 468 U.S. 883 (1984), and Rowely. Bd. of Ed., 458 U.S. 176 (1982), and the state administrative decisions in Sean G., No. 1987-21 (SBE, 1987), and Andrew H., No. 1986-33 (SBE, 1987). The State Hearing Officer concludes that the Regional Hearing Officer erred in finding that the Local System's proposed program was inappropriate.

A local system is required to provide a handicapped student with a free, appropriate public education at no cost to the parents. Education for All Handicapped Children Act ("EHA"), 20 U.S.C. § 1401 et. seq. A local system is required to provide only an appropriate education; it is not required to provide the best education. Rowley. In order, however, to provide an appropriate education, a local system is required to provide necessary support services. Tatro. Similarly, however, a local system is not required to provide medical services for a student except for purposes of diagnosis or evaluation. See, 20 U.S.C. § 1401(17).

Whether a local system can provide an appropriate education has to be determined by looking at the student's needs as set forth in the IEP prepared for the student. If the local system

has the ability to provide the services necessary to meet the goals and objectives set forth in the IEP, then it must be deemed as being able to provide a student with an appropriate education.

In Bd. of Educ. v. Rowley, 458 U.S. 176 (1982), the Supreme Court established the guidelines to be used in reviewing the placement of handicapped students. Thus,

> 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. Id. at 201.
>
> …the provision that a reviewing court base its decision on the 'preponderance of the evidence' is by no means an invitation to the courts to substitute their own notions of sound educational policy for those of the school authorities which they review. Id. at 206.
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> ...Congress' intention was not that the Act displace the primacy of States in the field of education, that that States receive funds to assist them in extending their educational systems to the handicapped. Therefore, once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the States. Id. at 208.
>
> ... it seems highly unlikely that Congress intended courts to overturn a State's choice of appropriate educational theories in a proceeding conducted pursuant to § 1415(e)(2). Id. at 208-209.

The thrust of the Court's decision is that the educational decisions made at the local level, while not sacrosanct, should be given great deference by the courts because the courts are not experts in educational theory. This same standard is equally applicable to hearing officers to the extent they similarly do not have any greater expertise with educational theories than the courts.

In the instant case, the question is whether the local system can provide an appropriate education outside a residential facility. The IEP prepared as a result of the December 1, 1987, meeting contained fifteen broad goals, which included reduction of compulsive behavior and maintenance of physical control. The Local System proposed to provide the services in a specially-designed severely emotionally disturbed program with one-to-one staffing for six hours per day.

The Regional Hearing Officer recited some of the initial phases of the program's implementation and concluded that the defects in the plan were glaring. The Regional Hearing Officer also concluded that the proposed program did not provide the least restrictive environment because there was a provision for a teacher to establish initial rapport with the Student in his home, and then he would be moved to a simulated classroom before being transferred into the psycho-educational center. All of the Regional Hearing Officer's objections to the proposed program are directed to the initial phases of implementing the program.

The record shows that the initial phases of the IEP implementation were designed to accommodate the needs of the Student and meet the concerns expressed by the Student's parents. The Student had been in an institutional setting during most of his school years. He is agitated when he confronts a new situation. The initial phases were designed to permit the Student to become acclimated to a new environment without going into a rage. The Local System's efforts to meet the perceived needs of the Student do not establish that the Local System could not provide the Student with a free appropriate public education.

According to the testimony presented at the hearing, the Local System can provide the educational services required by the Student's IEP. There was no evidence that the psycho-educational program was inappropriate. A psychiatrist, who evaluated the Student for the Local Board, recommended residential placement, but he also testified that the Student could receive educational benefits in the psycho-educational program. The psychiatrist's concern was that the psycho-educational center was not a hospital and the Student could not be controlled. The testimony and documents contained in the record that indicated the Local System cannot provide appropriate educational services were not based upon any knowledge of the psycho-educational program.

The Regional Hearing Officer apparently relied upon the reports prepared by the medical doctors who recommended that the Student be placed in a residential environment. None of these

individuals, however, testified that the psycho-educational program proposed by the Local System was inadequate. The specific reasons set forth for requiring a residential program were that the Student had to be monitored because of his violent outbursts; the residential program was recommended so that the Student would not injure himself or others. The psycho-educational program, with one-to-one instruction and sufficient staff available to prevent injury, will permit the Student to receive an appropriate education without injury to himself or others. The psycho—educational program is designed is treat students who are behaviorally disordered; students who, from time to time, exhibit violent reactions.

The Local Board submitted substantial evidence that it can provide the Student with an appropriate educational program and the record is lacking in substantial evidence to support the position that the Local Board cannot provide the Student with an appropriate program. Under the standards established by Rowley, supra, and the requirements of 34 C.F.R. § 300.550 (least restrictive environment) and 34 C.F.R. § 300.552(a)(3) (nearness to home), the Regional Hearing Officer erred in entering an order that the Student should be further institutionalized without the opportunity to move into a less restrictive environment.

The Regional Hearing Officer also erred in ordering placement at Healthcare. There is no evidence in the record that shows that an appropriate program can be delivered to the Student at Healthcare. The record contains a one-half page "proposed treatment plan" that cannot be deemed to be a valid IEP. A student cannot be placed in the absence of a valid IEP. 34 C.F.R. § 300.552(A) (2); See, Wesley B., No. 1982-19 (SBE 1982) (remand because of incomplete IEP). The record contains a description of the facility, but a generalized description does not establish that the facility is appropriate for the Student. The only witness who had visited Healthcare testified that the facility was not appropriate for the Student. The individual needs of each student has to be taken into consideration before a placement can be made. The only positive fact is that Healthcare is apparently willing to accept the Student. A willingness to accept a particular student, however, does not establish that the facility is appropriate in the absence of any evidence

that the facility can meet the individual needs of the student.

Although there was not substantial evidence that the Local System could not provide an appropriate educational program for the Student, the Local System was required to maintain the Student's status quo regarding residential placement. The District Court has ordered that the Student's "stay-put" placement is in Healthcare. The Local System, therefore, is required to maintain the Student at Healthcare during the pendency of the hearing and appeals process.

PART IV

DECISION

Based upon the foregoing, the State Hearing Officer is of the opinion that the Regional Hearing Officer erred in ordering placement of the Student at Healthcare. The decision of the Regional Hearing Officer that the Local System cannot provide the Student with a free appropriate public education is, therefore,

REVERSED.

This 10th day of May, 1988.

L. O. Buckland
State Hearing Officer