

STATE BOARD OF EDUCATION

STATE OF GEORGIA

PHILLIP C.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1988-19
v.	:	
	:	DECISION OF
DEKALB COUNTY BOARD	:	STATE HEARING OFFICER
OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by the parents of Phillip C. (“Student”) from a decision of a regional hearing officer that upheld the parents’ right to prohibit the DeKalb County School System (“Local System”) from conducting an evaluation of the Student under the provisions of the Education for All Handicapped Children Act, 20 U.S.C. § 1401 et. seq. Since the Regional Hearing Officer ruled in favor of the Student’s parents, no justiciable issue is raised and the appeal is dismissed.

The Student is presently in a private residential school where he was unilaterally placed by his parents. The parents requested Local System assistance with the costs of the residential school. The Local System asked the parents to make the Student available for evaluation testing in order to prepare an individualized educational program. The Student’s parents refused to permit the testing. The Local System requested a hearing on the issue of whether it had the right to conduct an evaluation of the Student.

At a pre-hearing conference, counsel for the Student’s parents stated that the parents were not requesting financial assistance from the Local System. Counsel acknowledged that a request had been made, but agreed that the parents were not requesting reimbursement as of the date of the pre-hearing conference and for purposes of the hearing. The hearing before the Regional

Hearing Officer proceeded on the narrow issue of whether the Local System had the right to perform an evaluation of the Student in the absence of a request for reimbursement when the Student was being educated in a private facility by the Student's parents.

The Regional Hearing Officer found that a local system had the right to conduct an evaluation of a student if it were asked to provide a free appropriate public education, but held that "a parent has the right to deny her 16 year old handicapped child a free appropriate public education by prohibiting the required testing, evaluation, and the resulting IEP."

34 C.F.R. § 300.534 requires a local educational agency to "insure" that an evaluation "is conducted every three years or more frequently if conditions warrant 34 C.F.R. § 300.534(b). Thus, it is clear that, if the local system is involved in providing a free appropriate public education to a handicapped student, the local system has an obligation to conduct an evaluation of the student.

It is also clear, however, that the parent can prevent the Local Board from being involved in the education of the Student. If the parent chooses to educate the Student in an accredited private facility, then the Local Board has no authority over the Student except to the extent the parent voluntarily cooperates with the Local Board's requests. The Local Board can ask the parent for permission to evaluate the Student, but, if the parent declines permission, the Local Board has no authority to conduct an evaluation and the Regional Hearing Officer has no authority to order an evaluation.

The hearing before the Regional Hearing Officer was requested by the Local System to determine if it had the right to conduct an evaluation. The Student's parents contested the right of the Local System to conduct an evaluation. The Regional Hearing Officer agreed with the parents and held that the Local System did not have a right to conduct an evaluation. There is, therefore, no relief to be granted to the parents on appeal. Any perceived ambiguity in the

Regional Hearing Officer's decision arises only if the Student's parents are requesting the Local System to provide a free appropriate public education or requesting the Local System to pay the costs of the private residential facility where the Student is presently placed. As previously discussed here, if the Student's parents request the Local System to become involved in providing a free appropriate public education, then the Local System not only has the right, but it has the duty to conduct an evaluation. Counsel for the Student, however, stated that a request for reimbursement was not being made, i.e., the Local System was not being asked to provide a free appropriate public education.¹

Since the Student's parents obtained the relief they sought before the Regional Hearing Officer, there is no further relief that can be granted on appeal. All other arguments raised by Appellant on appeal have been considered and found to be without merit. The appeal is, therefore,

DISMISSED

This 12th day of May, 1988.

L. O. Buckland
State Hearing Officer

¹ On appeal, Appellant appears to be taking a contrary position. Thus, many arguments are raised which appear to be based on the assumption that the Student's parents are asking the Local System to provide a free appropriate public education without conducting any evaluation of the Student. If such an assumption were true, then the Student's parents' position is untenable. This, however, was not the case presented to the Regional Hearing Officer, who had to decide the case based on the fact that a request for reimbursement was not being made and, therefore, a request was not being made for the Local System to be involved in providing the Student with a free appropriate public education.