STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID C.,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1988-21**
v.	:	
	:	**DECISION**
GWINNETT COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by the parents of David C. ("Student") from a decision of a regional hearing officer that the Gwinnett County Board of Education, which serves as the local educational agency ("LEA") for the Student, could provide the Student with a free, appropriate public education under the Education for All Handicapped Children Act, 20 U.S.C. § 1401 et. seq. (the "Act"). The parents claim that procedural errors were made in the conduct of the hearing, and that the Regional Hearing Officer's decision was erroneous in law and fact. The decision of the Regional Hearing Officer is sustained.

PART II

FACTUAL REVIEW

The Student was thirteen years old and in the seventh grade during the 1987-1988 school year. He was assigned to a regular classroom but was receiving resource assistance during the day. His achievement levels in spelling and reading are approximately at the third grade level and he displays inappropriate classroom behavior on a daily basis. A meeting was held on January 5, 1988, to develop an individualized education program ("IEP") for the Student. The LEA recommended enrolling the Student in its self-contained, emotionally handicapped

classroom, but the Student's parents rejected the proposed placement. The LEA requested a hearing to determine the proper placement for the Student.

The Student has experienced difficulty in school since he was in kindergarten. He was referred for psychological evaluation while in kindergarten. The examiner found that the Student's "inappropriate behaviors significantly interfere with his classroom performance, his peer relationships, and his emotional development. In addition, his pre-academic skills are currently readiness level at best." The Student was enrolled in a Primary Diagnostic Class with speech therapy, but his parents withdrew him from the special education program and enrolled him in a regular first grade class with a behavior disorders resource program. During the second and third grades, the Student was enrolled in a self-contained emotionally handicapped program. During the fourth grade, the Student's parents withdrew him from a learning disabilities program. In the fifth grade, the Student's parents objected to his placement in the self-contained emotionally handicapped program, and he was placed in a regular classroom with resource assistance for three hours per day. This program has remained in effect since the fifth grade.

During the hearing, the Student's parents contended that he should be placed in the LEA's self-contained learning disabilities program rather than the self-contained emotionally handicapped program recommended by the LEA. Additionally, the Student's parents contended that the LEA had violated their due process rights by (1) requesting a hearing; (2) failing to inform them of the availability of free or low-cost legal services; (3) failing to follow proper screening and testing procedures, and (4) refusing them access to the Student's records.

The Regional Hearing Officer found that the Student requires one-to-one attention in order to ameliorate his behavioral and academic deficiencies. The Regional Hearing Officer then decided that the self-contained emotionally handicapped program recommended by the LEA would provide the Student with an appropriate educational program. The Regional Hearing Officer also found that the technical violations of the due process procedures by the LEA did not

cause any harm to the parents. The Student's parents timely appealled the Regional Hearing Officer's decision to the State Hearing Officer.

PART III

DISCUSSION

The Student's parents contend on appeal that, because his law partner was once employed by the State Department of Education, "a serious issue of possible conflict" is raised concerning the State Hearing Officer. The State Hearing Officer is unaware of any possible conflict and deems disqualification inappropriate.

The Student's parents contend on appeal that the hearing was improperly held because it was requested by the LEA. The Student's parents contend that the Act only permits a parent to request a hearing; an educational agency is required to initiate implementation of a proposed program that a parent has rejected, and the parent has to request a hearing in order to halt implementation of the proposed program. The State Hearing Officer disagrees.

34 C.F.R. § 300.506(a) provides:

> A parent or a public educational agency may initiate a hearing on any of the matters described in Req. 300.504(a) (a) and (2). [emphasis added].

34 C.F.R. § 300.504(a) (1) covers any proposal "to ... change the ... educational placement of the child ...." In the instant case, the LEA proposed to change the educational placement of the Student from a regular classroom situation to a more restrictive environment. The federal regulations are clear in providing that the LEA can initiate a hearing when it proposes a change in educational placement. The State Hearing Officer, therefore, concludes that the LEA had the right to request a hearing before the Regional Hearing Officer when there was a disagreement over the proposed change in placement of the Student.

The Student's parents contend that the Regional Hearing Officer relied upon erroneous findings of fact. If there is substantial evidence to support the decision of a regional hearing officer, the decision will not be reversed on appeal. State Board Policy JOAA, June, 1984; Georgia Special Education State Program Plan, pg. 51. The Student's parents maintain that the Regional Hearing Officer improperly found that the learning disabilities class and the emotionally handicapped class have acceptably low ratios "which would guarantee the student the individual attention he requires", and that

> [t]he student has displayed chronic patterns of inappropriate behaviors, including sub-standard relationships with peers and teachers, numerous examples of acting-out and creating disturbances in the classroom, feelings of poor self-esteem and other behaviors which have interfered with his ability to learn.

The parents maintain the student needs to be tutored and that the inability to learn has caused the behavior problems rather than the behavior problems causing the inability to learn. The record shows that there are only eight students in the emotionally handicapped class and they are taught by a teacher and an aide. The record also shows that the Student has had behavioral problems since he was in kindergarten. While there was evidence that the Student's frustration could cause his behavior problems, the State Hearing Officer concludes that there was substantial evidence to support the findings of the Regional Hearing Officer.

The Student's parents claim on appeal that the Regional Hearing Officer erred by permitting testimony from witnesses who had not taught, tested, or observed the Student. The parents' principal claim is that the testimony constituted hearsay and could not be relied upon by the Regional Hearing Officer. A review of the record shows that no objections were raised at the hearing when the witnesses were presented. The witnesses were competent to testify about the program that was available, and, although they were not psychologists or psychiatrists, they were experienced in the special education field and could competently testify about the available programs and whether the programs were appropriate for the Student without previous experience with the Student. As noted by the Regional Hearing Officer, hearsay testimony is

permitted in an administrative hearing. It also does not appear that the Regional Hearing Officer relied solely upon hearsay testimony in arriving at a decision. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer did not err in permitting hearsay testimony to be admitted.

The Student's parents contend on appeal that the LEA and the Regional Hearing Officer erroneously used "labels" to determine the services that would be provided to the Student. A review of the record, however, shows that the parents' emphasis on labels is not supported by the facts. The parents apparently contend that the Student is unable to learn except in a small group or one-on-one situation, and it is the frustration over his lack of progress that causes the Student to exhibit behavior problems. The LEA contends that it is necessary to control the behavior problems before the learning problem can be attacked. The Regional Hearing Officer found that the Student requires small group instruction and behavior control, and that these services could best be provided in the self-contained emotionally handicapped class offered by the LEA. The Student's parents object to the emotionally handicapped class because of its "label", i.e., emotionally handicapped. The parents apparently believe that behavior control will be unnecessary if the Student is enrolled in the learning disabilities class. There is substantial evidence in the record, however, to support the Regional Hearing Officer's decision that the Student requires individualized instruction and that this can be delivered to the Student in the self-contained emotionally handicapped class. The State Hearing Officer, therefore, concludes that neither the LEA nor the Regional Hearing Officer used labels to determine the Student's needs; it appears instead that it is the parents who are more concerned about the label of the program than they are about the services to be delivered in the program.

The Student's parents contend on appeal that the Regional Hearing Officer erred by not granting a continuance in order for counsel to examine the school records. The record, however, shows that the request for a continuance was imprecisely stated in a letter to the Regional Hearing Officer, and was never raised as an issue at the hearing. Counsel for the parents wrote to

the Regional Hearing Officer that"

> ... we will have to have a continuance until we have the opportunity to review the entire file and secure the explanation we need.

When the hearing was started, counsel did not renew the request for a continuance or object to going forward. Any objections were, therefore, effectively abandoned. Since the issue was abandoned at the hearing before the Regional Hearing Officer, it will not be considered on appeal.

The Student's parents also argue on appeal that the Regional Hearing Officer erred by not granting them any relief for alleged due process violations committed by the LEA. The Regional Hearing Officer found that the parents were not harmed by the alleged due process violations and that relief was not warranted. On appeal, the only harm the parents point to is the fact they had to attend the hearing. As pointed out above, the LEA has the right to call for a hearing, and the fact that the parents attended the hearing does not constitute harm to the parents. The principal violation found by the Regional Hearing Officer was the failure of the LEA to provide the parents with a list of free or low-cost legal services available in the area. 34 C.F.R. § 300.506(c). The parents were, however, represented by counsel and continue to be represented by counsel, and counsel has not pointed out how they were harmed by this representation. The State Hearing Officer, therefore, concludes that the parents were not harmed by any alleged due process violations and the Regional Hearing Officer properly did not grant the parents any relief on their claims.

All other claims raised in the Student's parents' appeal have been reviewed and considered and are found to be without merit.

PART IV

DECISION

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

SUSTAINED.

This 14th day of June, 1988.

L. 0. Buckland
State Hearing Officer