

STATE BOARD OF EDUCATION

STATE OF GEORGIA

<p>MARY G.,</p> <p style="padding-left: 60px;">Appellant,</p> <p>v.</p> <p>ROME CITY BOARD OF EDUCATION,</p> <p style="padding-left: 60px;">Appellee.</p>	: : : : : : : : : : :	<p style="text-align: center;">CASE NO. 1988-45</p> <p style="text-align: center;">DECISION</p>
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PART I

SUMMARY

This is an appeal from a decision by a regional hearing officer by the parents of Mary G. (“Student”) that the Rome City Board of Education (“Local Education Agency” or “LEA”) could conduct an evaluation of the Student under the provisions of the Education for All Handicapped Children Act, 20 U.S.C. § 1401 et seq. (“EAHCA”). The decision of the Regional Hearing Officer is affirmed.

PART II

FACTUAL BACKGROUND

The Student is seven years old. The Student’s parents sought to enroll her in kindergarten in the spring of 1986. The Student was unable to complete a screening test, which is given to all children when they enroll, and the LEA requested permission from the parents to perform an evaluation to determine the Student’s needs. The Student’s parents did not grant permission and informed the LEA that they would not enroll the Student in kindergarten.

In April, 1988, the Student’s parents again presented the Student for enrollment in kindergarten and the Student took another screening test. Based upon the results of the screening

test, the LEA once again asked the Student's parents for permission to evaluate the Student. The Student's parents again refused and the LEA requested a hearing in order to obtain permission to evaluate the Student.

The Student's parents requested a continuance of the hearing before the Regional Hearing Officer, but the Regional Hearing Officer denied the request because the parents had adequate notice of the hearing and further delay would not be in the Student's best interests. At the conclusion of the hearing, the Regional Hearing Officer decided that the Student had special education needs and that the LEA should be permitted to evaluate the Student.

PART III

DISCUSSION

The Student's parents have appealed the Regional Hearing Officer's decision not to continue the hearing in order for them to obtain counsel. Additionally, the Student's parents maintain that they are entitled to an independent evaluation at public expense. The LEA maintains that the Student's parents had ample time to obtain counsel; that it is not required to pay for an independent evaluation, and there is substantial evidence to support the decision of the Regional Hearing Officer.

The EAHCA requires local school systems to identify all students that have special education needs. See, 34 C.F.R. § § 300.530-300.534. In order, however, to perform an initial evaluation of a student, the school system has to have the permission of the student's parents. Georgia Department of Education Regulations and Procedures, IDDFd3-1 IB-1 (9/01/83).¹ If the student's parents do not give permission, then the local school system can request a hearing to determine if an evaluation should be made. Georgia Department of Education Regulations and

¹ The revised regulations that went into effect on November 1, 1988 contain the same provisions. Georgia Department of Education Regulations and Procedures, "Requirements", [2]C—1 (11/01/88).

Procedures, IDDFd3-IB-li (9/01/83). During the hearing, the student's parents have the right to have counsel and assistance. 34 C.F.R. § 300.508; Georgia Department of Education Regulations and Procedures, IDDFd3-3-IE-3d (9/01/83).

In the instant case, the Student's parents were notified, on August 2, 1988, that the LEA would request a hearing before a hearing officer to obtain permission to evaluate the Student. The parents were also informed that the request would be made on August 12, 1988 if permission had not been granted by then. The parents were also given a copy of the hearing rights of parents, which stated that they had the right to have counsel present at the hearing. The Student's parents were again notified on August 11, 1988 that a hearing would be requested. They were then notified a week before the hearing of the actual hearing date.

The Student's parents maintain that they only had one week in which to obtain counsel, and one week is an insufficient amount of time to obtain counsel. As found by the Regional Hearing Officer, the Student's parents had notice that the LEA intended to request a hearing, and they were notified of their right to counsel. The notice was given to the parents almost one month in advance of the hearing. There was, therefore, ample time to obtain the assistance of counsel. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer did not err in proceeding with the hearing in the absence of counsel for the Student's parents.

Contrary to the Student's parents' contention, the Regional Hearing Officer did not rule that an independent evaluation was necessary. The Regional Hearing Officer merely found that the student should be evaluated. A local school system is not required to pay for an independent evaluation unless it is determined that the evaluation performed by the local system is inappropriate. 34 C.F.R. § 300.503(b). In the instant case, an evaluation has never been performed by the LEA, so it is premature to decide on the appropriateness of the evaluation. The State Hearing Officer, therefore, concludes that the LEA does not have to pay for an independent evaluation.

The Student's parents' primary concern appears to be that the LEA will use the evaluation as a means for attaching a label to the Student and for removing her from the regular classroom. They believe the Student should have the opportunity to remain in the regular classroom, even if she requires some assistance. This, of course, is the very concern that the EAHCA addresses. The initial evaluation does not determine the Student's placement or the programs that will be made available to her. Additionally, the LEA is required to provide a free appropriate public education in the least restrictive environment. The Student's parents have rights under the EAHCA that they can utilize to guard against any arbitrary labeling or placement. This, however, does not prevent the LEA from conducting an initial evaluation in order to determine the Student's needs.

PART IV

DECISION

Based upon the foregoing, the record presented, and the briefs submitted; the State Hearing Officer is of the opinion that there is substantial evidence to support the decision of the Regional Hearing Officer. The Regional Hearing Officer's decision that the LEA should be permitted to evaluate the Student is, therefore,

AFFIRMED.

This 7th day of December, 1988.

L. O. Buckland
State Hearing Officer