

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DONALD V., : CASE NO. 1979-24  
Appellant :

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Rockdale County Board of Education herein appealed from is hereby affirmed.

This 13th day of December, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION  
STATE OF GEORGIA

IN RE: DONALD V. : CASE NO. 1979-24  
: :  
: :  
: :  
: : REPORT OF  
: : HEARING OFFICER

PART I  
SUMMARY OF APPEAL

This is an appeal by the parent of Donald V. (hereinafter "Student") from a decision by the Rockdale County Board of Education (hereinafter "Local Board") to adopt the recommendation of a regional hearing officer concerning the placement of the Student. The appeal is based on the parent's contention that the decision of the regional hearing officer was erroneous. In addition, the appeal raises other issues which are hereinafter discussed. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II  
FINDINGS OF FACT

During the spring of 1979, an individual education plan ("IEP") was prepared for the Student. The Student is handicapped by a severe hearing loss. The Student's parent

objected to the inclusion of a "total communication" program in the IEP because she was convinced that an "oral only" program should be used. The parent requested a due process hearing under the provisions of P.L. 94-142. The hearing was held before a regional hearing officer on September 18, 1979. The regional hearing officer rendered his decision on September 28, 1979 and the Local Board approved the decision on October 18, 1979. The parent filed her appeal to the State Board of Education on October 26, 1979.

The record shows that the Student is 12-1/2 years old. He suffers from a congenital severe hearing loss. The regional hearing officer found that the Student had been in a private residential program for six years beginning at age five. The Student was transferred to the public school system for the 1978-79 school year. While in the private school, the Student was instructed through the use of the "oral only" method of instruction. This method of instruction emphasizes the use of oral speech and language and does not permit the use of hand gestures to aid in communication. The private school is the only institution in the State which uses an oral only program. While at the private school, the Student had some initial behavior problems, but these were overcome in the structured learning situation into which the Student was placed.

The regional hearing officer also found that the expert testimony and the documents submitted into evidence either favored a "total communication" approach or said the methodology of instruction was not important. The "total communication" approach involves the use of "signing", i.e. the use of prescribed hand gestures, as an aid to communication by the hearing impaired person.

The regional hearing officer found that the Student's speech was limited upon entering the public school. The oral approach was continued during the 1978-79 school year until the Student became upset, anxious, tense and frustrated. The teachers then instituted total communication as an aid to the oral approach. When the IEP was prepared in the spring of 1979, it called for the use of the total communication approach. In addition, the IEP established that a teacher of the hearing impaired and a speech therapist would assist in the Student's instruction. Short term goals were not developed because the Student's parent rejected the long term goal of using total communication. The regional hearing officer found that the IEP was adequate because of the total communication support and the lack of progress which had been made using the oral only program for six years in the private residential program.

PART III

CONCLUSIONS OF LAW

The appeal requests that the decision of the Local Board be reversed by the State Board of Education because:

(1) The regional hearing officer was not impartial;

(2) The Georgia review procedures are not in compliance with federal law because additional evidence cannot be presented at the state level;

(3) The findings by the regional hearing officer were erroneous, arbitrary and capricious, and unsupported by the evidence;

(4) The IEP prepared by the school system was inadequate because it did not contain short term goals;

(5) The regional hearing officer erred in ruling that the burden of proof for showing the inadequacy of the IEP was on the parents, and

(6) The school system violated federal law by introducing signing without the parent's consent.

The first issues presented for decision are the challenges to the qualifications of the regional hearing officer and the adequacy of the review procedures instituted by the State of Georgia. The Student's parent argues that the regional hearing officer was not impartial because he

has previously served as a regional hearing officer and has not ruled in favor of the parents. The Student's mother then challenges the State of Georgia review procedures as being in violation of federal law because they do not permit the State Hearing Officer to receive additional evidence. The Student's parent desires to present additional evidence to the State Hearing Officer concerning the impartiality of the regional hearing officer. Both of these issues, however, were not raised at the initial hearing. The challenges arose only after the regional hearing officer issued a decision with which the parent disagrees. If an issue has not been raised and decided upon at the initial hearing, it cannot thereafter be raised for the first time on appeal to the State Board of Education. Hobby v. Tift County Bd. of Ed., Case No. 1977-6. Additionally, with respect to the challenge of the review procedures of the State of Georgia, the federal regulations, 45 C.F.R. 121a.510, do not grant either party a right to present additional evidence at the state review level. The regulations, instead, provide that the state reviewing officer shall "seek additional evidence if necessary." There must, therefore, be a threshold determination by the state reviewing officer that additional evidence is necessary in order to make a decision. If the threshold determination has been made that additional evidence is not necessary, then there is no need to receive additional evidence and parent has not

been deprived of any rights granted by law. The Hearing Officer, therefore, concludes that these two issues do not establish the basis for an appeal and it is unnecessary for the State Board of Education to render any decision regarding them.

The appeal also challenges the sufficiency of the evidence and alleges that the decision of the regional hearing officer was erroneous, arbitrary and capricious. Specifically, the Student's parent argues that the regional hearing officer improperly characterized the recommendations of the expert witnesses, and did not specifically discuss the "necessary elements of an IEP that are lacking in the Rockdale proposal", "the factual discrepancies relating to hours for instruction", and "the questions raised about short-term objectives, methods of evaluation, the content of outside consultative services, or . . . [the Student's] social contacts with mainstreamed children or other hearing impaired children." A review of the record, however, shows that there is substantial evidence in support of the regional hearing officer's decision. The reason for the due process hearing, as outlined to the regional hearing officer by the parties at the outset of the hearing, was the contention by the Student's parent that the Student should be educated by using the "oral only" method of instruction, while the Local School System proposed the use of a "total communication" approach. The number of hours

of instruction, the lack of short-term objectives, and other elements of the IEP were not in issue. Evidence was received concerning these other matters, but the purpose of the hearing was to decide if it was appropriate for the local school system to institute a total communication approach. It was, therefore, unnecessary for the regional hearing officer to address each piece of evidence that was submitted during the hearing. The Hearing Officer, therefore, concludes that the decision of the regional hearing officer was supported by the evidence and his decision was not erroneous, arbitrary or capricious.

The Student's parent argues that the IEP was not adequate because it did not contain any short-term goals. The Local Board admits that the short-term goals were not prepared, but argues that since the Student's parent objected to the long-term goals, it was unnecessary to have the short-term goals prepared for the hearing. 45 C.F.R. §121a.346 provides that the IEP of each child must include

"A statement of annual goals, including short term instructional objectives."

In the instant case, however, the parent objected to the very basis on which any short-term goals would be predicated. The short-term goals, or the lack thereof, were not the reason the parent requested the due process hearing. The parent's objection went to the Student's placement rather than the contents of the IEP. The IEP can be prepared after a decision regarding the placement is made. The

Hearing Officer, therefore, concludes that the IEP was adequate to the extent that it was completed. The Local School System, however, must immediately develop the short-term goals and include them in the IEP.

The Student's parent has also raised the issue that the regional hearing officer improperly placed the burden of proof on the parent to show that the IEP was inadequate. The Hearing Officer has carefully reviewed the transcript and documentary evidence and concludes that the Local School System presented sufficient competent evidence to support its position even if, as argued by the Student's parent, the burden of proof was on the Local School System. The Hearing Officer, therefore, concludes that the regional hearing officer's decision does not establish a basis for reversal.

The final issue raised by the Student's parent is whether the Local School System violated 20 U.S.C. §1415(b) and (c) by introducing "signing" to the Student without obtaining the parent's consent. The Hearing Officer, however, concludes that the past decisions of the Local School System are not subject to review in the context presented by this appeal. As previously discussed, the purpose of the hearing was to determine if "signing" should be used as a method of aiding in the education of the Student. The Local School System had stopped using signing after the Student's parent objected by instituting the due

process proceedings. If there was any violation of the federal statutes, the violation does not have any impact on these proceedings. The Hearing Officer, therefore, concludes that any previous actions taken by the Local School System in the instant case are not subject to review at this time.

#### PART IV

#### RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the individual education plan for the Student was adequate and that the Local School System can provide a free, appropriate public education for the Student. The Hearing Officer, therefore, recommends that the State Board of Education uphold the decision of the Rockdale County Board of Education, with instructions that the short-term goals be immediately prepared.

*L. O. Buckland*

---

L. O. BUCKLAND  
Hearing Officer