

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: Keith J.

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CASE NO. 1981-10

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,

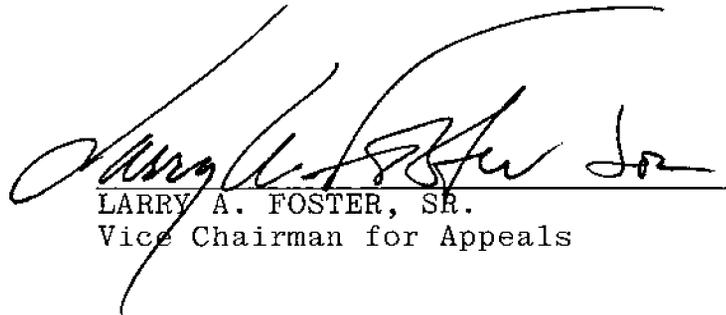
DETERMINES AND ORDERS, that the Findings of Fact of the Hearing Officer are made the Findings of Fact of the State Board of Education and by reference are incorporated herein; and

DETERMINES AND ORDERS, that the Burke County School System conduct speech therapy and physical therapy evaluations of the student herein and prepare an individualized education program and determine what is an appropriate placement program for the student, taking into consideration such additional evaluations; and

DETERMINES AND ORDERS, that the decision of the regional hearing officer that the Burke County School System must provide therapy services is reversed because the evidence shows that the October 28, 1980, individualized education program for the student only required therapy evaluations and did not require therapy services to be provided, and services cannot be provided without a valid individualized education program requiring such services.

Mr. Stembridge, Mr. McClung and Mrs. Oberdorfer were not present.

This 9th day of April, 1981.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: KEITH J.

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CASE NO. 1981-10
REPORT OF
HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal to the State Board of Education by the Burke County Board of Education (hereinafter "Local Board") from the decision of a regional hearing officer regarding the special education placement of Keith J. (hereinafter "Student"). The regional hearing officer decided that the Burke County School System (hereinafter "Local System") was required to provide special education services to the Student. The Local Board contends that the Student is not educable and, therefore, is not eligible for special education services. The Student's parent has also appealed the regional hearing officer's decision that she was not entitled to reimbursement for a privately obtained evaluation. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

PART II
FINDINGS OF FACT

At the time of the hearing before the regional hearing officer, the Student was six years old and attending the Burke County Training Center on a fulltime basis. He began attending the Center when he was four years old. The Burke County Training Center is operated by the Department of Human Resources. The Local System convened a placement committee meeting on October 28, 1980, to determine an appropriate placement for the Student. Because of insufficient information, an "interim" individualized educational program ("I.E.P.") was prepared which provided that the Student would remain in the Training Center, but was to receive occupational therapy and speech therapy evaluations. The Local System conducted observations of the Student, interviewed the Training Center personnel, and had an occupational therapy evaluation performed.

Another placement committee meeting was held on December 16, 1980. The committee recommended that the Student remain in the Burke County Training Center for another year. The I.E.P. developed at the meeting did not contain any provisions for occupational or speech therapy. The Student's parent disagreed with the recommendation and requested a hearing before a regional hearing officer.

The hearing before the regional hearing officer was

held on February 11, 1981. The regional hearing officer issued his decision on February 20, 1981. The Local Board met on March 4, 1981, and rejected the findings, conclusions, and decision of the regional hearing officer. All of the hearings were held within the proper times.

The regional hearing officer found that the Student was of a chronological age which made him eligible for special education services. The Student was both physically and mentally retarded, but he required occupational therapy, physical therapy, and speech therapy. The regional hearing officer also found that the personnel in the Burke County Training Center did not have the necessary qualifications to provide the Student with a school setting. He found that the Local System denied responsibility for providing the Student with special education services because of their contention the Student was incapable of obtaining an education.

The regional hearing officer concluded that the Local System was responsible for providing the Student with a free, appropriate, public education in the least restrictive environment. He also concluded that the Local System had prepared the Student's I.E.P. without first obtaining an adequate evaluation of the Student's needs. Based upon his conclusions, the regional hearing officer decided the Local System needed to conduct a comprehensive evaluation of the Student and prepare another I.E.P. He also decided the Local System needed to

immediately implement physical therapy, occupational therapy, and speech therapy while the evaluation was being made. He denied the Student's mother's request that the Local System pay for a physical therapy evaluation she obtained in preparation for the hearing before the regional hearing officer because it was obtained "without benefit of a hearing procedure."

PART III

CONCLUSIONS OF LAW

The Local Board rejected the findings, conclusions and decision of the regional hearing officer because: 1) the evidence did not support the findings, conclusions, and decisions; 2) the immediate implementation of the therapy services was contrary to law; and 3) the evidence showed that the Student would never be able to learn to read or write and would be unable to learn the simplest math or the alphabet and the rendering of any services beyond custodial care was futile because the Student was totally lacking in educational capabilities.

A review of the record shows there was evidence presented to the regional hearing officer which supported his decision that the Local System had not conducted a sufficient evaluation prior to holding the December 16, 1980 placement committee meeting. It was established that the Student required physical and speech therapy in addition to

occupational therapy. The Local System only obtained an occupational therapy evaluation prior to preparing the Student's I.E.P. If there is any evidence to support the decision of the regional hearing officer, the decision will not be disturbed upon review by the State Board of Education. See, Antone v. Greene County Board of Education, Case No. 1976-11.

The Local Board contends that custodial services are the only appropriate services for the Student since the evidence shows he will not be able to learn to read or write and will not be able to learn anything of an "educational" value. The Local Board, therefore, takes the position it is not required to provide the Student with any services. In other words, the provisions of Public Law 94-142 are not applicable to the Student because he cannot benefit from special education services. The Local Board has not cited any authority for this position, and a review of the federal regulations and the Georgia Special Education Annual Program Plan does not appear to support the Local Board's contentions. Section 121a.1 of 45 C.F.R. provides that the purpose is to ". . . insure that all handicapped children have available to them a free appropriate education . . ." The term "handicapped children" is defined to include mentally retarded children without any qualifications, 45 C.F.R. §121a.5(a). The Hearing Officer, therefore, concludes that the regional hearing officer

properly determined that the Local System was required to provide the Student with special education services at no cost to the parents.

The Local Board also maintains that the regional hearing officer erred in deciding it was necessary to immediately implement speech, occupational, and physical therapy during the evaluation process and before the preparation of a new I.E.P. If an I.E.P. has been improperly prepared, a placement cannot be made based upon the I.E.P. See, In re Jim B., Case No. 1981-4; In re John G., Case No. 1980-26. The December 16, 1980 I.E.P. was determined to be invalid by the regional hearing officer because it was prepared without obtaining the proper evaluations. The October 28, 1980 I.E.P., therefore, remains in existence as the only agreed upon placement of the Student. Arguably, the October 16, 1980 I.E.P. was also invalid because it was prepared without obtaining sufficient information, but the question of its validity was not before the regional hearing officer and it remains as the only agreed upon placement of the Student. The October 16, 1980 I.E.P. provides that the Student is to obtain occupational therapy evaluation and speech therapy evaluation and that services are to be provided "as needed". It is unclear from the face of the I.E.P. or from evidence contained within the record whether the "as needed" refers to the evaluations, or to the actual therapy services. There was, however, evidence in the record that the Student

required these services. The Hearing Officer, therefore, concludes that the regional hearing officer did not err in deciding that the Local System should immediately begin providing these services to the Student while further evaluations are being made.

The regional hearing officer decided that the Student's parent was not entitled to reimbursement for the cost of a physical therapy evaluation which the parent obtained in preparation for the hearing. 45 C.F.R. §121a.503 provides that parents may obtain an independent evaluation of a child if they disagree with the evaluation obtained by the local school system, but the local school system has the opportunity of showing at a hearing called for the purpose of showing that the evaluation it has obtained was appropriate. If the local school system's evaluation is determined to be appropriate, the parents do not have the right to obtain an independent evaluation at public expense. The regulation does not provide for an independent evaluation to be at public expense if it is obtained without first having a hearing to determine the appropriateness of the local school system's evaluation. The Hearing Officer, therefore, concludes that the regional hearing officer properly denied the parent's request for reimbursement of the costs of the privately obtained physical therapy evaluation.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted and the brief of counsel for the Student's parent, the Hearing Officer is of the opinion the regional hearing officer had sufficient evidence before him to determine that the additional evaluation of the Student was necessary, the Local System was responsible for providing special education to the Student, therapy services should be provided to the Student while the additional evaluations were being made, and the Student's parent was not entitled to reimbursement for the physical therapy evaluation she obtained. The Hearing Officer, therefore, recommends that the decision of the regional hearing officer be sustained.

(Appearances: For Parent - Georgia Legal Services, Kent Silver;
For Burke County School System - William M. Fulcher)



L.O. BUCKLAND
Hearing Officer