

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: KELLY M.

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CASE NO. 1981-19

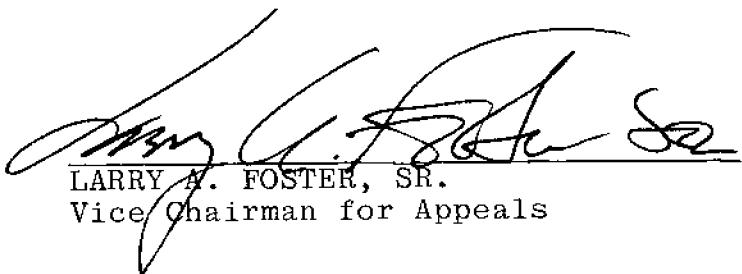
O R D E R

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 regional hearing officer herein appealed from is hereby sustained.

This 13th day of August, 1981.



LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

: CASE NO. 1981-19  
IN RE: KELLY M. : REPORT OF HEARING  
: OFFICER  
:

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Kelly M. (hereinafter "Student") from a decision by a regional hearing officer that the Cobb County School System (hereinafter "Local System") could provide an appropriate education for the Student, and that the Cobb County Board of Education (hereinafter "Local Board") was not required to reimburse the Student's parents for the costs they had incurred in placing the Student in a private residential facility. The appeal was made on the grounds the evidence does not support the decision of the regional hearing officer and the present residential placement of the Student is appropriate. The Hearing Officer recommends that the decision of the regional hearing officer be sustained.

## PART II

### FINDINGS OF FACT

The eight-year old Student, who has been diagnosed as trainably mentally retarded, severally mentally retarded, and possibly autistic, is in a private residential facility. The Student's parents requested a hearing under the provisions of Public Law 94-142 for the purpose of obtaining reimbursement of the expenses they incurred in having the child placed in the private residential facility. A placement committee had determined that an appropriate educational program for the Student was available in the Children's Center operated by the Local System. The Children's Center program provided for day care services during the regular school hours and school term. The parent's request for reimbursement, therefore, had been denied by the Local System.

The hearing before a regional hearing officer was held on June 1, 1981. The regional hearing officer rendered his decision on June 9, 1981 and the Local Board accepted the decision on June 22, 1981. An appeal was made to the State Board of Education on June 25, 1981.

Among his findings of fact, the regional hearing officer found:

1. The Student is handicapped and requires special education services as provided by Public Law 94-142.

2. The Student has been diagnosed as trainably mentally retarded, severally mentally retarded, and possibly autistic. The Student's parents placed the Student in a year-round residential facility because they could not manage her at home.

3. The Student's parents did not have any problems with the educational components provided by the Local System.

4. The Local System has recommended and has available a program for autistic children which includes special instructional services, speech and physical therapy, and monitored bus transportation.

5. The current residential placement of the Student is very restricted and is not in close proximity to the home.

6. The Local System offers a no-cost program for the parents to learn home management techniques.

Based upon his findings, the regional hearing officer concluded that the residential services were being used because of the home management difficulties encountered by the Student's parents and not because of any problems in the educational services provided. There was no evidence that the Student would regress if removed from the school setting during the summer months, and no evidence that the Student required a residential treatment program in order to obtain any benefit from educational services. The regional hearing officer decided that the Local System could provide an

appropriate education in the least restrictive environment. He also decided that, since the Student's parents has unilaterally withdrawn the Student from the Local System, they were not entitled to reimbursement for the expenses they incurred in having the Student in the private residential program because the Local System had an appropriate educational program available for the Student.

### PART III

#### CONCLUSIONS OF LAW

In their appeal to the State Board of Education, the Student's parents maintain that the evidence supports their contention the Student requires a residential program because she does not have any control over her behavior and requires constant supervision which cannot be given at home. They maintain the regional officer erred in deciding the present residential placement was not appropriate and would have been recommended by the Local System but for a misunderstanding concerning the provisions of Public Law 94-142. The Local Board maintains that the Local System is required to provide an "appropriate" education, and not the "best" education. They maintain that Public Law 94-142 requires that educational services be provided in the least restrictive environment, and the proposed program is the least restrictive environment. The Local Board also argues that the Local System has an appropriate educational program

available, and if the Student's parents choose to place the Student in a private residential program, the Local Board is not required to pay for such services.

Although the Student's parents maintain that the evidence submitted at the hearing does not support the decision of the regional hearing officer, the Hearing Officer concludes that there is sufficient evidence to support the decision of the regional hearing officer. The Student was originally removed from the Local System by the parents because they were unable to manage her at home and were concerned about providing her with a safe environment. At the time of her removal, the Student's parents did not have any objections concerning the educational program provided by the Local System. The Local System introduced evidence which established that it could provide an educational program designed to meet the Student's individual needs as an autistic child or as a severely mentally retarded child. There was no evidence introduced which contested the educational program recommended by the Local System. The sole purpose of placing the Student in a residential program, and the only reason why recommendations were made for such a placement, was to remove the Student from the home environment because the parents felt they were unable to properly supervise her and she created a burden on the family. There was no evidence introduced by the Student's parents that the Student's learning ability would be adversely

affected by being in the recommended program, nor was there any evidence that the Student would regress if she was removed from the classroom situation during the summer months. The regional hearing officer received testimony concerning the recommended program and the ability of the Local System to meet the special education needs of the Student. From a review of the record, it is clear the Local System has an appropriate program available for the Student.

A local school system is required to provide residential treatment only if the special educational needs of the student require such a placement. 20 U.S.C. §140(18); 45 C.F.R. §121A.302. If the special education needs of a student do not require a residential program, a local school system is not required to provide such a program. See, In re Victor B., Case No. 19. In the instant case, it is clear the Local System can provide an appropriate educational program to meet the special educational needs of the Student by enrolling her in the Children's Center. Placement in a residential program is not necessary in order for her to receive or benefit from the special education services that need to be provided. The Hearing Officer, therefore, concludes that the placement recommended by the placement committee will provide the Student with a free and appropriate public education.

The parents of handicapped students have the right to withdraw their child from a local school system and enroll

the child in a private residential facility. If, however, the local system has an adequate educational program available for the student, the student's parents cannot receive reimbursement for the cost of a residential program. 45 C.F.R. §121a.403. In the instant case, the Local System had an appropriate educational program available, but the Student's parents unilaterally withdrew her from the Local System and placed her in a private residential facility in order to remove her from the home environment because they feared for her physical safety. She was not removed because she was unable to receive special educational services. The regional hearing officer, therefore, correctly decided that the Local Board was not required to reimburse the Student's parents for the costs they had incurred in placing her in the residential facility.

PART IV  
RECOMMENDATION

Based upon the foregoing finding, conclusions, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion the placement recommended for the Student will provide her with a free and appropriate public education, and that the Student's parents are not entitled to reimbursement for the expenses they unilaterally incurred by placing her in a private residential program. The Hearing

Officer, therefore, recommends that the decision of the regional hearing officer be sustained.

(Appearances: For Parents - Thomas W. Branch III, Wildman, Harrold, Allen, Dickson & Masinter; For Local Board - Richard H. Still)

L.O. Buckland  
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Hearing Officer