

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: MORGAN W.

:

CASE NO. 1981-34

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,

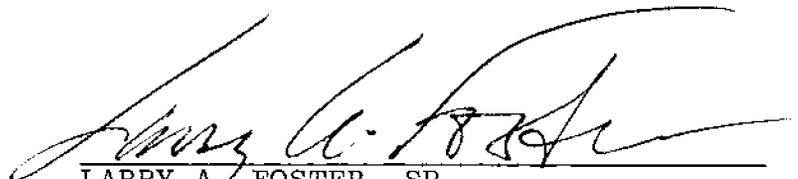
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the regional hearing officer herein appealed from is hereby sustained.

Messrs. Smith, Foster and Temples voted no.

Mrs. Oberdorfer and Mr. Lathem were not present.

This 12th day of November, 1981.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: MORGAN W.

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CASE No. 1981-34

REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the Coweta County Board of Education (hereinafter the "Local Board") from a decision by a regional hearing officer that the Coweta County School System (hereinafter "Local System") did not have an appropriate special education program available for Morgan W. (hereinafter the "Student"). The Local Board contends that the evidence does not support the findings and recommendations made by the regional hearing officer. The Hearing Officer recommends that the decision of the Regional Hearing Officer be sustained.

PART II

FINDINGS OF FACT

The Student, who is presently age fifteen, was placed in a private residential facility by his parents in August, 1981, based upon the recommendation of a private clinical psychiatrist they employed to evaluate the Student.

The psychiatrist diagnosed the Student as having an attention deficit disorder and a conduct disorder. Prior to the Student's admittance into the private residential facility, his parents requested financial assistance from the Local System. When the request for financial assistance was received, the Local System convened a placement committee to evaluate the Student, recommend a program, and prepare an individualized education program ("IEP") for the Student. At the placement committee meeting, the Student's parents rejected placement in any program other than the private residential program they had under consideration. The placement committee prepared an IEP for the Student which provided for one-half day in a behavioral disorders class, one period in a learning disabilities class, and learning disabilities support in English and Social Studies. In addition, individual and family counselling were scheduled. The Student's parents rejected the IEP and the recommended placement and requested a hearing. The hearing before the Regional Hearing Officer was conducted on September 10 and September 17-18, 1981. The regional hearing officer issued her decision on September 28, 1981. The Local Board rejected the decision and filed an appeal to the State Board of Education on October 7, 1981.

The Regional Hearing officer found that the Student had a learning disability which was first discovered when the Student was in the second grade. The Student was placed in a learning disabilities program in the fourth grade for a short period of time. He repeated the fourth grade and was then placed in a private school where he attended the fifth and sixth grades. At the end of the sixth grade, the Student's parents had the Student evaluated by a clinical psychologist who found that the Student was developing a poor self image and an unfavorable attitude towards school. The clinical psychologist recommended that the Student be placed in the public school system with specialized help in a resource room. The psychologist's report was given to the Local System, when the Student was enrolled, but, during the seventh and eighth grade, the Student did not receive any special education. The Student's teachers, who were unaware of the psychological evaluation, did not recognize that the Student had a learning disability. He, nevertheless, was the subject of frequent discipline measures for minor non-aggressive behavior in the classroom, and he averaged a "D" grade in his subjects. During the Spring of 1981, the Student's father requested the Local System to conduct a psychological evaluation of the Student. The Local System's response was to file a juvenile complaint against

the Student for unruly behavior in the school. A crisis counsellor for status offenders was assigned to the Student's case. This counsellor visited the Local System counsellor and the Student's teachers, and counselled with the Student. She then recommended to the parents that the Student be placed in a private residential facility.

The Student's parents rejected the idea of residential placement and began seeking private psychological and psychiatric evaluations of the Student. It was determined that the Student had developed a behavioral disorder as a result of his inability to satisfactorily perform in the school. During the Summer of 1981, the Student was found in possession of marijuana on two occasions. Following this, the private psychiatrist recommended to the Student's parents that he be placed into a private residential facility.

Based upon her findings, the Regional Hearing Officer decided that the proper placement for the Student was in the private residential facility for at least one semester. She also decided that the Student should then be re-evaluated to determine if he could return to the public school system. She also decided that the Local System's responsibility for payment of the private residential facility began at the time the regular school facilities opened rather than from the time the Student was enrolled in the private residential facility.

The Regional Hearing Officer did not make any explicit findings concerning the IEP prepared by the Local System, the program offered by the Local System, or the appropriateness of the services available to the Student within the Local System. The Local Board rejected this decision and appealed to the State Board of Education. The Student's parents filed a motion to dismiss the appeal on the grounds the review procedures of the State Board of Education are not in compliance with Public Law 91-142.

PART III

CONCLUSIONS OF LAW

The Local Board contends that the evidence submitted does not support the findings or decision of the Regional Hearing Officer. The Local Board argues that the Student has a demonstrated ability to learn within the regular educational program, and that residential placement is not the "least restrictive" placement for the Student.

The Regional Hearing Officer did not recite any findings concerning the program recommended by the Local System for the Student. Instead, the Regional Hearing Officer recited the past failures of the Local System to identify the Student as having a learning disability and to provide him with special education services. Although these past failures may have directly resulted in the

Student's behavioral disorder, they are not relevant in any consideration of the appropriateness of the present program recommended by the Local System except insofar as they may have led the Regional Hearing Officer to the conclusion that the Local System has a demonstrated inability to provide even recommended services. Implicit, however, in the Regional Hearing Officer's decision is the finding that the Local System cannot provide an appropriate program for the Student.

The State Board of Education has followed the rule that in the absence of a hearing at the state review level, if there is any evidence to support the decision of a regional hearing officer, then that decision will not be disturbed upon review. See, In re Xernona F., Case No. 1981-14; Antone v. Greene County Bd. of Ed., Case No. 1976-11. In view of the Local Board's contentions, the issue presented is whether the record contains any evidence to support the Regional Hearing Officer's decision.

The examining psychiatrist testified that the Student's use of marijuana was as a direct result of the frustrations he experienced in the school setting, and a highly restrictive, residential setting was required. She also testified that the program proposed by the Local System would not provide the Student with the success he required to overcome his emotional disorder. In addition, a clinical psychologist recommended long-term residential

treatment, as did the crisis counsellor assigned to the Student. Both the psychiatrist and the psychologist were independent evaluators who were not associated with either the residential facility or the Local System. The Hearing Officer, therefore, concludes that there was evidence available which supports the decision of the Regional Hearing Officer.

The Student's parents filed a motion to dismiss the appeal based upon the argument that the appeal procedures are not in conformity with Georgia law because they purport to be in effect under the authority of Georgia Code Section 32-910, but Georgia Code Section 32-910 was amended effective July 1, 1980, to provide that it was not applicable in hearings concerning the Education For All Handicapped Children Act of 1975 (Public Law 94-142). In making this argument, however, the Student's parents referenced the procedures for appeals from decisions by a local board of education rather than the appeals procedures adopted for hearings conducted by a regional hearing officer pursuant to Public Law 94-142, which are contained in the Special Education Annual Program Plan for Fiscal Year 1980.

The Student's parents also have moved to dismiss the appeal on the basis of the decision contained in Helms v. McDaniel, Case No. 81-7111, United States Court of Appeals for the Fifth Circuit, and the procedure which

treats the findings of the State Reviewing Officer as the findings of a special master. The procedures in effect for the review of cases arising under Public Law 94-142 have not provided for the State Hearing Officer to sit in the place of the State Board of Education in deciding appeals from the decisions of regional hearing officers. Additionally, the decision in the Helms v. McDaniel case has not been finalized.

The Hearing Officer, therefore, concludes that the motion to dismiss should be denied. Based upon the conclusions regarding the decision of the Regional Hearing Officer, however, the denial of the motion to dismiss does not affect the outcome of the proceedings.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, and the record submitted, the Hearing Officer is of the opinion that there was evidence available to support the decision of the Regional Hearing Officer and the appropriate placement for the Student is in a private residential facility. The Hearing Officer, therefore, recommends that the decision of the Regional Hearing Officer be sustained.

L. O. Buckland

L.O. BUCKLAND
State Hearing Officer