

MAY 24 1983

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: ANTHONY W.) CASE No. 1983-11
))
) DECISION OF
) STATE HEARING OFFICER

The parents of Anthony W. (hereinafter "Student") requested contribution from the DeKalb County School System (hereinafter "Local System") towards the payment of the Student's tuition at a private school in which the parents had enrolled the Student when they disagreed with the placement recommended by the Local System. A hearing was conducted and the Regional Hearing Officer decided that the placement recommended by the Local System would provide the Student with a free, appropriate public education, and, since the parents unilaterally enrolled the Student in the private school without the benefit of a hearing, the parents were not entitled to reimbursement for the tuition payments they incurred. The parents appealed the decision to the State Hearing Officer and alleged that the placement recommended by the Local System was not appropriate. For the reasons stated hereafter, the State Hearing Officer affirms the decision of the Regional Hearing Officer.

The Student, who is thirteen years of age, was continuously enrolled in the Local System's special education program from the time he entered in 1976 until the spring of 1982. A Placement

Committee meeting met and developed an individualized education plan ("IEP") for the Student on April 6, 1982. The Committee recommended placing the Student in a behavior disorders class at Snapfinger Elementary. The behavior disorders class was deemed appropriate and was recommended because of the insistence of the parents even though the Local System Committee members felt that placement in the Developmental Learning Class at Canby Lane Elementary School was better suited to the Student's needs. The Placement Committee was reconvened on September 9, 1982, because the parents questioned placement in the behavior disorders class. The parents contended that the Student was not achieving according to his potential and they felt the continued placement in the behavior disorders class contributed to his lack of progress. The Placement Committee then recommended placement in the Developmental Learning Class at Canby Lane Elementary School. The Student's parents disagreed with the recommended placement and on September 16, 1982, they informed the Local System that the Student had been enrolled in a private school and they requested financial assistance from the Local System for a part of the costs associated with the private school. The record is not clear on whether the Local System or the Student's parents requested a hearing before a regional hearing officer, but apparently the request was made by the parents.

The Regional Hearing Officer found that the Student was multi-handicapped with "deficiencies in cognitive areas, severe

social problems, poor verbal skills, poor space perception, behavior problems and possible neurological deficits." The Developmental Learning Class at Canby Lane Elementary School provides a structured, self-contained program with vocational training, occupational therapy, behavior management, and the teaching of socialization skills. Related visual and auditory services are available. The pupil-teacher ratio is low and the program is designed to fit multi-handicapped students who do not fit into the usual categories of handicap. The students have an opportunity to be with non-handicapped children as much as their condition permits. The Regional Hearing Officer found that the Developmental Learning Class at Canby Lane Elementary School was an appropriate program for the Student.

The Student's parents maintain on appeal that the recommended placement was inappropriate because the Student has not made academic progress commensurate with his IQ and grade expectancy. They point to the achievement tests given to the Student to show that he has not been making any progress. They also contend that the Developmental Learning Class program is inappropriate based upon their observation of the class plus their contention that the Student has been making progress since he has been enrolled in the private school.

There was no evidence submitted to show that the Developmental Learning Class was inappropriate for the Student. On the contrary, the Local System showed that the Developmental Learning Class is designed to meet the needs of multi-handicapped

children such as the Student. The Student requires individual attention in a structured environment. The Developmental Learning Class provides a structured environment and the Student will be able to receive individual attention because the pupil-teacher ratio ranges from 1:1 to 1:4 during each day. The Student would be in an environment where he would be able to socialize with non-handicapped children and he would receive socialization instruction in the program. Some of the witnesses testified that there was a need to begin vocational training and the program can provide such training. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer properly decided that the Local System had an appropriate public program available for the Student in the least restrictive environment.

The parents contended during the hearing before the Regional Hearing Officer that the Student had not academically progressed and his IQ scores should be higher and were not indicative of his ability. They attributed the lower scores to a specific learning disability resulting from neurological impairment and visual problems. There was, however, no evidence to indicate that the evaluations were improperly made. The psychological and achievement tests have been consistent and show that the Student has progressed academically. He is currently functioning at the grade level expected based upon his IQ scores, and the fluctuations in scores have been within the expected norms for children with the Student's handicaps. A recent

visual examination uncovered visual deficits which were previously unnoticed, but there was no evidence that the visual deficits hindered the Student's level of functioning. The State Hearing Officer, therefore, concludes that the Student has made academic progress while enrolled in the Local System's special education program.

If a local school system can provide an appropriate educational program for a handicapped child, the local school system is not required to pay for the costs of private schooling when the child's parents unilaterally place the child in the private school. See, Stemple v. Board of Education of Prince George's County, 623 F.2d 893 (4th Cir., 1980). In the instant case, therefore, the determination that the Local System has an appropriate public educational program available for the Student prevents the Student's parents from recovering private schooling tuition costs. 20 U.S.C. § 1415(e)(3).

Based upon the foregoing findings and conclusions and the record submitted, it is the opinion of the State Hearing Officer that the Regional Hearing Officer correctly decided the issues involved and the decision of the Regional Hearing Officer is, therefore,

AFFIRMED.



L. O. BUCKLAND
State Hearing Officer