

STATE BOARD OF EDUCATION

STATE OF GEORGIA

**CRISP COUNTY BOARD
OF EDUCATION,**

Appellant,

**LAUREN T.,
HEARING OFFICER
Appellee.**

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CASE NO. 1986-28

DECISION OF STATE

PART I

SUMMARY

This is an appeal by the Crisp County Board of Education (hereinafter "Local Board") from a decision of a Regional Hearing Officer that the placement proposed by the Local System for Lauren T. (hereinafter "Student") was inappropriate, that the private placement obtained by the parents is appropriate, and that the Local Board should pay the costs associated with the private placement from the time when the Local Board had a full opportunity to consider the Student's parents' demands for residential placement. The Local Board contends the Student's Individualized Education Plan (hereinafter "IEP") is appropriate and it should not be required to pay the costs of the private school. Additionally, the Local Board contends that, if the State Hearing Officer finds the Local Board did not offer an appropriate education for the 1986-1987 school year, the case should be remanded for a finding as to the appropriateness of the private school. The parents contend the Regional Hearing Officer correctly found that the Local Board did not offer an appropriate program and that the private placement was appropriate. The parents, however, cross-appealed the Regional Hearing Officer's decision that the Local Board is not

required to reimburse them for the costs of private placement beginning when the parents sent the Student to private school.

PART II

FACTUAL BACKGROUND

The Student in this case is an eight-year-old female who has received special education services since her preschool days. During the 1984-1985 school year, the Student was served in the Crisp County School System (hereinafter "Local System") in a self-contained moderately mentally handicapped classroom for twenty hours per week with another seven-and-a-half hours per week in a regular kindergarten program with non-handicapped children. In addition to the special education services provided by the Local System, the parents provided the Student with private speech therapy from 1981 until the Student was removed from the Local System in April, 1985. At that time, the parents placed the Student in a private residential school which provided services on an eleven-month basis.

In March of 1986, the parents requested a hearing based on their belief that the program offered by the Local System was inappropriate and the program offered by the private school in which the Student was placed was appropriate. The Local System developed a new IEP in a meeting held on April 16, 1986, and recommended placement in the Local System's program for the moderately mentally handicapped; speech/language therapy one hour per week; mainstreaming for music, P.E., lunch and assembly programs; and special transportation. On advice of counsel, the parents did not attend the IEP meeting.

The hearing before the Regional Hearing Officer began on April 18, 1986, and was continued to May 5, 1986, with the parents contesting the adequacy of the past placements and the adequacy of the placement offered under the April 16, 1986 IEP, and contending the private placement was appropriate. To support their position, the parents presented the speech

pathologist from the private school, a psychologist who had evaluated the Student for the parents, the speech pathologist who worked with the Student when the Student attended school in the Local System, the mother of the Student and several other witnesses.

The private school speech pathologist testified the Student did not use language appropriately, needs individual sessions because she is easily distracted, has gained in her language skills by one year and seven months since she has been at the private school, and would not make the progress she needs with speech and language services only twice a week.

The psychologist who evaluated the Student for the parents testified substantially as follows. The Student has an I.Q. of about fifty or below, which falls in the moderate range of mental retardation, was at the two-year-three-month level in adaptive behavior, and was at the two and a half year range in communication, daily living skills, socialization, and motor skills. The Student rated about 4.8 years in sociability. The Student has a significant attention deficit, which requires behavior modification, and needs a combination of small-group and individual teaching. In comparing the 1985 testing with the 1984 testing, the psychologist noticed large increases in visual-motor skills and in the Student's social maturity. In order for the Student to make any gains whatsoever, the Student needed an intensive language based program in a small group of three, four or five children with a teacher who uses direct teaching, models a piece of language and then has the children respond to it. The Student needs one-to-one direct services because she is so significantly language delayed that without additional individual teaching and therapy in language, her language probably will not progress much past where it is. Mainstreaming is not important except in the area of socialization which is a trade off with learning the cognitive skills. On a normal school year schedule, the Student would, during the summer, lose gains made during the preceding school year, and several months would be required for her to

recoup those gains. Without the twelve-month program, or even an eleven-month program, it would be more difficult for the Student to sustain the gains that she makes during the regular school year. The Student also needs a strong parental-involvement program.

The speech and language pathologist who worked with the Student for three sessions a week from 1981 to 1984 testified that the Student, at the time she went to the private school, was falling approximately one year behind in her receptive language and between two and three years behind expressively, her academic and social skills had elevated, her functional skills remained quite delayed, and she required one-to-one speech therapy. She further testified the Local System's program would provide some benefit, but the private school would provide more benefit.

The Student's private school teacher testified the Student did not experience a loss of skills any greater than do average children while she was out for the one-month break.

The mother testified that when the Student was in the Local System, there were ten or eleven students in the classroom, there was no interaction between the parents and the Local System, the Local System offered speech only twice a week in a small group of two to three children, and the Student's placement was made before development of the actual teaching activities that would occur in the classroom. The Student's mother further testified she never indicated any dissatisfaction concerning the program offered the Student by the Local System until she talked with the director of special education for the Local System in February or March of 1985, just prior to removing the Student from the Local System.

The Local System presented a private psychologist and a school psychologist who had performed independent evaluations of the Student for the Local Board, the Student's past teacher, the principal of the school in which the Local System recommended the Student be placed, and other witnesses. The private psychologist testified that the Student needed an educational program for the moderate to severe child which would concentrate on the development of adaptive skills, self-help skills, socialization skills, language development and the academic skills that are supportive of survival functioning. He testified that the IEP prepared for the Student by the Local System seemed appropriate to him.

The Student's 1984-1985 teacher testified that the Student's mother acknowledged the Student's progress and did not complain to the teacher regarding the Student's placement.

The principal of the school the Student was recommended to attend testified that the Student's mother did not complain to her about the Student's placement. Additionally, she testified the students in the proposed placement ranged in age from seven to eleven.

Based upon the testimony and the documentary evidence presented, the Regional Hearing Officer found in pertinent part as follows:

1. The IEP was silent as to any services during the summer.
2. The IEP made no provision for continuity or "carry-over" between the Student's work at school and her home environment, and thus does not address the "generalization" problem discussed by the witnesses for the parents.
3. The Local System could not assure the resources would be in place to keep the numbers and age ranges of the children in the mo/mh class within the limits of state requirements or guidelines.
4. The Local System has only two certified speech pathologists who serve approximately one hundred students.

5. Residential placement was not discussed at the April IEP meeting even though the System was then aware of the parent's demand for residential placement.
6. The chronological age range of the children in 1984-85 spanned five years, in violation of IDDFd3-16, at p 3.c.
7. The private school was an appropriate placement because:
 - a. it addressed her speech/language and gross and fine motor skills problems.
 - b. it integrated her special education into a twenty-four-hour-per-day program designed to assure that her gains in these areas could be generalized into her non-school life through self-care and social activities.
 - c. the eleven month program minimized the regression she would experience from one school term to another.
8. The private placement is not too restrictive absent an alternative placement that is also appropriate.
9. The parents did not even confront the Local Board with the deficiencies they perceived in the Student's program, let alone formally or even informally demand residential placement.

The Regional Hearing Officer concluded that the Local Board was procedurally deficient for failing to consider the need for summer services or speech/language therapy, and that the program offered failed substantively in that the age ranges of the students in the placement offered the Student exceeded the mandatory age range allowed under state regulations. At that point, the Regional Hearing Officer found it unnecessary to decide whether the other specific substantive aspects of the 1984-1985 IEP met the Act's requirements of a free appropriate education. The Regional Hearing Officer concluded the private school placement was appropriate, and not rendered invalid because of the requirement for placement in the least restrictive environment, because no alternative placement was provided by the Local System that was also appropriate.

The Regional Hearing Officer determined the Local Board was responsible for payment of the private placement from the time when the Local Board was requested to provide residential placement and developed the inappropriate IEP, but it was not required to pay for the private placement prior to that time because the parents had not expressed dissatisfaction with the program offered by the Local Board.

Additionally, the Regional Hearing Officer concluded there is little reason to believe that the Local Board would or could soon provide the speech/language services, the home carryover program, and the summer services, which are all essential if the Student is to receive any benefit from her education that she can generalize to the home environment, and not substantially lose through regression. The Regional Hearing Officer then directed the Local Board to reimburse the parents their full cost of the private placement from and after April 16, 1986, and to develop an IEP implementing the private placement until the Local Board develops an IEP which provides the Student with a free appropriate public education as described by the Regional Hearing Officer's decision.

The Regional Hearing Officer issued a timely decision, after agreed upon delays, on June 7, 1986. The Local Board filed its appeal and the parents filed their cross-appeal by letters received by the State Department of Education on July 7, 1986. The time for the State Hearing Officer's decision was delayed based upon the requests of the parties for additional time for filing of briefs.

PART III

DISCUSSION

The Local Board contends the Student's IEP is appropriate and it should not be required to pay the costs of the private school. Additionally, the Local Board contends that, if the State Hearing Officer finds the Local Board did not offer an appropriate education for the 1986-

1987 school year, the case should be remanded for a finding as to the appropriateness of the private school. The parents contend the Regional Hearing Officer was correct in his determination that the Local Board did not offer an appropriate program and that the private placement was appropriate. However, the parents cross-appeal the Regional Hearing Officer's decision that the Local Board is not required to reimburse the parents for the costs of private placement beginning when the parents sent the Student to private school.

The State Hearing Officer is bound to sustain the decision of the Regional Hearing Officer if it is consistent with the law and there is substantial evidence to support that decision.

State Board Policy JQAA, June, 1984; Georgia Special Education

State Program Plan FY 84-86, pg. 51.

The first issue to be addressed on appeal is whether the placement offered by the Local Board under the April, 1986 IEP was an appropriate program. The Regional Hearing Officer concluded the placement was inappropriate because the Local Board erred procedurally, when it failed to consider summer services and speech/language therapy, and substantively, when the program it offered failed to address the need for systematic coordination or carryover between the Student's school program and her home life and because it offered less speech/language therapy than was needed.

The State Hearing Officer concludes the decision of the Regional Hearing Officer, that the program offered was inappropriate, is supported by substantial evidence. The Regional Hearing Officer found that the IEP was silent as to any services during the summer, residential placement was not discussed at the IEP meeting, the IEP was silent as to the need for physical therapy, the IEP failed to address the need for carryover between home and school, the IEP

provides less speech/language therapy than the evidence suggests the Student needs to benefit from education and the record suggests doubt as to whether, within any reasonable period, the Local Board will be in a position, or prepared, to offer certain of the services the Student requires to benefit from education.

These conclusions were supported by the written IEP, the minutes of the IEP meeting, the testimony regarding speech/language therapy, and testimony regarding the resources of the Local System. Even though the parents were requesting residential placement in a private school which offered an eleven month program, the IEP was silent with respect to the issues pointed out by the Regional Hearing Officer. Additionally, there was substantial evidence in the form of testimony regarding the need for more than one hour of speech therapy a week. Indeed, the Local System should have been well aware the parents provided three hours of speech therapy a week on their own when the Student was in attendance at its school. The evidence supports the Regional Hearing Officer's conclusion that the provision of speech therapy was established according to the resources of the Local System rather than the needs of the Student. While a lack of resources may occasionally justify a delay in the provision of services, when no alternative exists, in this Student's case, an alternative clearly did exist; i.e. the provision of private speech therapy which had been provided by the parents, at public expense. The testimony that the Local Board only has two certified speech pathologists to serve approximately one hundred students also supports the Regional Hearing Officer's conclusion that the Local Board may be unable to provide the necessary service to meet the needs of the Student.

The second issue to be addressed on appeal is whether the parents should be reimbursed for the costs of the private school placement. The Regional Hearing Officer concluded the parents should be reimbursed from the time the Local Board had the opportunity to consider the

parents objections, but failed to consider the necessary placements and offer an appropriate placement. He concluded the private placement obtained by the parents was an appropriate placement.

On appeal, the Local Board contends the placement at the private school is not appropriate and, therefore, the parents are not entitled to reimbursement. At the hearing, the Local Board contended the placement in the private school was inappropriate because it was in violation of the requirement that the Student be placed in the least restrictive environment. In addition to making that argument on appeal, the Local Board now argues that the private school is not approved for children with the Student's handicap, and requests the decision be remanded for findings with respect to that issue.

The Regional Hearing Officer concluded that the private school placement did not violate the requirement that the Student be placed in the least restrictive environment, at least when the proposed alternative placement was inappropriate. The Regional Hearing Officer did not consider the issue of whether the placement in the private school was appropriate based on the private school's approval by the State Department of Education because that issue was not raised at the hearing.

The State Hearing Officer is of the opinion that the Local Board failed, both procedurally and substantively, to provide an appropriate education and, thus, the Regional Hearing Officer's determination regarding reimbursement constitutes an appropriate remedy. The parents, in seeking placement for their child, must rely on the school to give them expert guidance on the appropriate placement. As of the April, 1986 IEP, the Local Board offered a placement which was not appropriate. The record does not reflect any notice to the parents by the Local System that the Local Board considered the private school placement inappropriate because it was not

approved by the State Board of Education for the Student's particular handicap. Indeed, the Local Board contended only, until shortly after appeal, that the private school placement was too restrictive. The parents were forced to select what they believed was an appropriate placement, without assistance from the Local Board. When placement is shown to be appropriate for the needs of the individual student, reimbursement for the costs of that placement is appropriate. additionally, the issue of the Student's handicap is not the key to placement. Placement decisions are to be made based on the individual needs of the Student. Simply because the Student in this case meets the mental requirements to qualify as moderately mentally retarded, it does not mean the Student can only be served in a preordained program for the moderately mentally retarded. The Student must be served in a program designed to meet the needs of the individual Student. While it may be true that the needs of a moderately mentally handicapped student may be met by a program designed for the moderately mentally handicapped, such a fact does not preclude the need for an individual determination in each instance. The testimony in this case revealed that the Student was in need of a speech/language program. The private school was approved by the State Board of Education for speech/language and, thus, based on the individual needs of the Student, the decision of the Regional Hearing Officer that the program is appropriate is supported by substantial evidence.

The parents contend they should be reimbursed for the placement in the private school from the time when the Local Board failed to provide an appropriate program, even though they never complained regarding the services provided by the Local Board. The Regional Hearing Officer concluded the Local Board was not responsible for retroactive reimbursement prior to the April, 1986 IEP meeting when the parents first brought notice of their discontent to the attention of the Local Board.

The decision of the Regional Hearing Officer meets the requirement of the Act in providing a remedy which is appropriate. The parents failed to notify the Local System that they in any way were displeased with the program offered by the Local Board. In fact, the evidence indicates that the comments made by the parents to the Local Board were positive in nature. To allow the parents to wait a year after placing the Student in private school, and then request reimbursement without any prior complaint, would provide an inequitable result and would lead away from the purpose of the Act: to encourage placement in the least restrictive environment. Had the parents notified the Local Board of their discontent upon initial placement in the private school, it is possible that by now the Local Board would have created an appropriate placement in a less restrictive environment than the private school. At least the process of a hearing and appeal would have taken place a year earlier. To allow the parents to place the Student in private placement without complaint, only to be reimbursed at any point they later are able to demonstrate the placement offered by the Local Board is not appropriate, would encourage even more delay by the parents in raising the issue.

A final matter to be considered on appeal is that the Regional Hearing Officer's decision may be read to conclude that the speech/language services, physical therapy, a home carryover program, and summer services are essential services to be provided in any new IEP developed by the Local System. The Regional Hearing Officer's conclusions were based on what he would conclude if such conclusions were necessary and do not appear to be based on specific findings made by the Regional Hearing Officer. Any services offered or lack of services offered in a future IEP may be the subject of future challenges before a Regional Hearing Officer. The current placement in the private school is appropriate and, if the Local Board proposes another placement, it will face the burden at that time of proving that the program offered is appropriate. The Local Board will not be precluded from introducing additional evidence as to the necessity

of certain related services, just as the parents will not be precluded from introducing additional evidence or contending additional services are necessary.

PART IV

DECISION

Based on the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer is supported by substantial evidence and is calculated to provide an appropriate remedy under the Act. The decision of the Regional Hearing Officer, that the program offered by the Local Board is not appropriate, that the private placement is appropriate, and that the Local Board should reimburse the parents for the cost of placement from the date of the IEP meeting, is

SUSTAINED.

This 9th day of September, 1986.

L. O. BUCKLAND
State Hearing Officer