

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: J.L.

:  
: CASE NO. 1984-13  
:  
: DECISION OF  
: STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of J.L. (hereinafter "Student") from a decision by a regional hearing officer granting the Cobb County School System's (hereinafter "Local System") motion to dismiss and denying the parents' request for compensatory education for the Student. The parents appealed the decision, but failed to state their reasons for appeal either in an appeal letter or brief. The Student was 22 years old at the time of the hearing. The Local System maintained they no longer had an obligation to provide an education to the Student because he was beyond the age for which they were required to provide educational services. The parents maintained the Student was entitled to compensatory education: (1) under the Education for All Handicapped Children Act of 1975 (hereinafter "EAHCA") because the Local System had failed to provide the Student an appropriate education; and (2) under Section 504 of the Rehabilitation Act of 1973 (hereinafter "Section 504") because the Local System had discriminated against the Student because of his handicap. The decision of the Regional Hearing Officer is sustained.

PART II

FINDINGS OF FACT

The Student in this case is a mentally handicapped student who was classified as Trainably Mentally Retarded (a designation which has now been changed to Moderately Mentally Handicapped). Until this school year, the Student had been in formal education programs for about fifteen years. He was in the Cobb County School System for approximately seven years. In October of the 1983-84 school year, the Student turned twenty-one. At that time, the Local System consulted the State Department of Education to determine whether they should continue providing educational services to the Student. Initially they were informed they could cease educational services at the time the Student turned twenty-one. However, before services were stopped, the State Department of Education informed the Local System educational services should be provided until the end of the school year in which the Student turned twenty-one. The Local System continued providing educational services, but notified the parents that the Student would graduate as of the end of the school year. The parents did not agree that the Student should be graduated, or that the Local System should cease providing educational services to the Student and they proceeded to request a due process hearing contending the Student was due compensatory education "because of lack of programming vocational preparation and multiple infractions of state and federal guidelines."

Prior to the hearing, the Local System moved to dismiss the case as a matter of law because the Student had exceeded the age beyond which the Local System had an obligation to provide services and because case law prohibited requiring them to provide compensatory education. The Regional Hearing Officer reserved ruling on the motion in order to hear evidence to determine whether the Local System was educating anyone else beyond the age of twenty-one, whether the Student was endangered during his schooling, or whether the Student's due process rights had been violated. The hearing was held on July 30 and 31, 1984. The Regional Hearing Officer concluded the Student was precluded by law from receiving compensatory education due to his age and the absence of any extensive conduct on the part of the Local System which would warrant an exception to the general principle that a school system is only obligated to educate students below the age of twenty-one. The Regional Hearing Officer's decision was issued August 24, 1984 and this appeal was orally requested within thirty days of that decision.

### PART III

#### CONCLUSIONS OF LAW

The parents were notified of their opportunity to submit a brief in support of their appeal. However, they have apparently chosen not to file a brief as one has not been received by the date requested, nor has any request for a delay been made. The State Hearing Officer, noting that the parents are unrepresented by counsel, will consider that the appeal is

made on the same grounds as were argued before the Regional Hearing Officer.

The parents contended before the Regional Hearing Officer that the Local System had failed to comply with the requirements of the EAHCA and Section 504 and, therefore, the Student was entitled to compensatory education because he was not prepared to function in the outside world. The Regional Hearing Officer recognized that this claim was similar to the so-called "educational malpractice" claims which have been filed in various courts in recent years. He made a determination that under current case law the parents would have to demonstrate that the Local System had acted in bad faith in order to prevail for compensatory education under the EAHCA or that the parents would have to be able to demonstrate that the Local System was educating other students over the age of twenty-one, and thereby discriminating against the Student in order to prevail for compensatory education under Section 504. Consideration of the Regional Hearing Officer's decision on the bad faith and discrimination claims, and the State Hearing Officer's conclusions in this respect, make it unnecessary to determine whether, as a matter of law, the case should have been dismissed on the argument that compensatory education is unavailable under the law of this jurisdiction.

The Regional Hearing Officer stated at the outset of the hearing that he was looking for evidence as to whether the Local System currently educated anyone beyond the age of twenty-

one, whether the Student's physical safety had ever been endangered, and whether the Student's procedural due process rights had been violated. He thus put the parent's on notice of what they needed to prove before compensatory education could be considered if permitted. The hearing lasted two days and the Regional Hearing Officer, after hearing all the evidence presented, concluded that there was no evidence presented of discrimination by the Local System. He further concluded that the evidence showed the Local System acted in good faith towards the Student and that they provided the Student with an appropriate educational program, under the standard required by the U.S. Supreme Court in Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 173, 102 S.Ct. 3034 (1982), in that the program provided was of some benefit to the Student.

After a thorough review of the record and transcript in this case, the State Hearing Officer is of the opinion that there was substantial evidence presented at the hearing to support the conclusions of the Regional Hearing Officer. The record does not contain any evidence that the Local System discriminated against the Student because of his handicap. The record is replete with testimony of Local System personnel that the Student was provided an appropriate education. The testimony by Local System personnel is substantial evidence to support the decision of the Regional Hearing Officer. The parents' testimony also shows that the Local System attempted to provide an appropriate education for the Student.

The evidence also shows that the parents were aware of their rights to a due process hearing as early as 1977 and chose not to go through that process. They cannot now require the system to provide compensatory education when the Local System made a good faith effort to serve the Student.

PART IV

DECISION

Based upon the foregoing findings and conclusions and the record submitted, the State Hearing Officer is of the opinion that there is substantial evidence supporting the Regional Hearing Officer's decision to deny the parents' request for compensatory education because the Local System did not act in bad faith or discriminate against the Student on the basis of his handicap. The issue of whether compensatory education could be awarded in the event bad faith or discrimination had been shown is not reached in light of the above determination. The decision of the Regional Hearing Officer is, therefore, SUSTAINED.

This 15<sup>th</sup> day of October, 1984.

*L. O. Buckland*  
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L. O. BUCKLAND  
State Hearing Officer