

STATE BOARD OF EDUCATION

STATE OF GEORGIA

PAIGE N.,

Appellant

V.

**MUSCOGEE COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 1987-25

**DECISION OF STATE
HEARING OFFICER**

PART I

SUMMARY

This is an appeal by the parents of Paige M. (hereinafter "Student") from a decision of a Regional Hearing Officer that the Muscogee County Board of Education (hereinafter "Local Board") offered the Student an appropriate education in the Least Restrictive Environment, except that the Local Board needed to increase the time the Student is seen by a registered physical therapist from once every two weeks to once a week.

PART II

FACTUAL BACKGROUND

The Student is a ten year old girl who is profoundly handicapped, both mentally and physically, has cerebral palsy, is unable to walk, and is legally blind. The Student's parents requested a hearing on whether the Local Board had offered the Student an appropriate education and a hearing was held on May 11, 12, and 14, 1987. The Regional Hearing Officer issued his decision on June 8, 1987.

The Regional Hearing Officer held that the program of occupational therapy services scheduled for the Student is appropriate in all respects. He based this opinion on testimony from the parents' witnesses that the Student was making substantial progress with the services, and on testimony that the occupational therapist had instructed the teachers and aides sufficiently to enable them to supplement the service. He further held that the Student was not eligible for speech-language services based upon the testimony of the Local Board's special education consultant that the Student did not display the capacities required for eligibility. He also held that the proposed placement was the least restrictive environment because it was in

“the most normal setting possible consistent with ... [the Student’s] capabilities and educational needs.” Finally, the Regional Hearing Officer determined that the physical therapy was appropriately administered by the teachers and aides for the system and that the Student requires the direct intervention of a physical therapist for one-half hour every week, as opposed to the bi-weekly services, which had been offered by the Local Board, and the three times a week services sought by the parents.

The parents filed this appeal on July 8, 1987. The appeal letter simply provided notice of appeal and did not state the reasons for the appeal. Because the attorney for the parents requested a delay in submitting her brief on appeal, this decision was delayed to allow consideration of the points briefed.

PART III

DISCUSSION

The Local Board contends that the failure to comply with the requirement in the regulations to state the reasons for the appeal warrants dismissal of the appeal. The failure to state the reasons for the appeal was amended when the parents submitted their brief of contentions. Because the notice of appeal was filed within thirty days of the decision of the Regional Hearing Officer, and the reasons for the appeal were subsequently briefed, the appeal should not be dismissed.

The parents set forth seven contentions on appeal, as set forth in the brief by counsel. First, the parents contend additional occupational therapy is needed to compensate for regression because of the lack of therapy for ten months in 1986-1987, and six months in 1985-1986. They contend that because the Student was without the services of

an occupational therapist for those time periods, and because the Student's mother and two other witnesses testified the Student regressed during that time period, the Student should be entitled to compensatory treatment.

The Regional Hearing Officer declined to decide the issue of whether regression had occurred. He concluded that the issue was what services were required in order to assist the Student toward her stated goal of maintaining and improving her range of motion. The Regional Hearing Officer determined that the program of occupational therapy offered by the Local Board was appropriate to meet the Student's needs. The Regional Hearing Officer based his conclusion upon the evidence that the parents' own witnesses admitted that the Student was making substantial progress under the program offered, and that they also agreed with the frequency of services offered. Although the parents argue that there was contradictory testimony, that contradictory testimony does not negate the presence of substantial evidence to support the decision of the Regional Hearing Officer that the program of occupational therapy was appropriate. The State Hearing Officer is required to sustain the decision of the Regional Hearing Officer if his decision is supported by substantial evidence and no error of law is shown. State Board Policy 3QAA, June, 1984; Georgia Special Education

State Program Plan FY 84-86, P9 51.

Second, the parents contend the Regional Hearing Officer erred in finding that the Student does not qualify for speech/language services. The parents contend that the Student is eligible and that, even if she is not eligible for direct *services*, she would be eligible for indirect or consultative services and should work on developing the prerequisite skills needed to qualify for direct services. The parents contend that the Student met the necessary criteria because the Student's mother and another witness testified that the Student made consistent sounds C or drinking and because the Student could manipulate a rattle and a tambourine.

The Regional Hearing Officer found that the Student did not meet the necessary criteria for speech/language services. The Regional Hearing Officer based his finding on expert testimony that the Student did not meet the requirements. There was testimony in the record that the Student did not meet certain criteria required in order to be eligible for speech/language services, and the only evidence to the contrary was the testimony by the Student's mother. The other witness cited by the parents did not provide evidence to the contrary. The Regional Hearing Officer was

authorized to accept the testimony of the expert provided by the Local Board that the Student did not meet the necessary criteria for speech/language services over the testimony of the Student's mother that the Student exhibited skills that would make her eligible for those services. The Student will receive indirect services from the teachers, and, should the Student develop skills that would qualify her for direct services, direct services will have to be provided.

The parents' third contention is that the physical size of the classroom hinders appropriate education and the physical location of the classroom denies least restrictive environment. The parents argue that the placement is not in the least restrictive environment because the testimony indicated that the Student's IEP could be implemented anywhere.

The Regional Hearing Officer found that there was no evidence that the severely and profoundly handicapped children in the self-contained programs, the program suggested as an alternative by the parents, experience any meaningful interaction with non-handicapped children and that the proposed placement appears to be "the most normal setting possible consistent with" the Student's "capabilities and educational needs"

The Regional Hearing Officer was authorized to find that the argument concerning the size of the classroom was irrelevant and hold that the placement was in the least restrictive environment. The only testimony regarding the size of the room was, as the Regional Hearing Officer concluded, the parents' witness' dislike of the Student's teachers moving furniture around at times. Such a statement does not warrant a finding that the placement is inappropriate because of the size of the Student's room.

The possibility that the Student's TEP may be implemented in another setting does not, by itself, mean that the other setting is required. The concept of least restrictive environment requires a weighing of the advantages of different placements, and placement with non-handicapped children being required to the maximum extent appropriate. The Regional Hearing Officer found that the students in the placement sought by the parents were functioning on a higher level than the Student, and thus

placement with them was not appropriate. As was stated in Michelle F., State Board of Education Case No. 1986-55, “the least restrictive environment requirement does not mean that handicapped students have to be placed with non-handicapped students simply because the handicapped student can survive in the environment. Contact with non-handicapped students is not the sole determining factor in deciding where a student should be placed. The determination of what is the least restrictive environment also has to take into consideration the student’s handicap, ability, needs, and the educational benefits to be derived.” Additionally, a local board of education may choose to provide certain services at one location and not at another for economic reasons, or reasons of centralization. The Regional Hearing Officer was justified in holding that the Student’s proposed placement was no more restrictive than the placement desired by the parents.

The parents’ fourth contention is that the informal team that met in the Spring of 1986 made an illegal decision that was the basis for the 1986-1987 IEP and placement. The parents, relying on Sean C. v. Cobb County Board of Education, State Board of Education Case No. 1985-6, contend that the decision for placement was thus made without parental input.

The Regional Hearing Officer found that this did not impact the IEP in question, which was the 1987 IEP, and thus did not need to be considered. Even though the evidence supports the finding of the Regional Hearing Officer, Sean C. is inapposite in the present case. Sean C. considered the fact that when a classification is made, a placement decision may, for all practical purposes, have been made. In the present case, it appears that a recommendation was formed, but a decision had not been made and no classification was included in the alleged decision.

The parents’ fifth contention is that physical therapy is required more than thirty minutes per day. The parents apparently rely on their argument relating to occupational therapy for support of this contention. The Regional Hearing Officer found that direct intervention of a registered physical therapist at least once a week, together with the services performed by the staff members, was reasonably calculated to enable the Student to meet his goals.

Substantial evidence supported the Regional Hearing Officer’s finding that the direct intervention of a registered physical therapist at least once a week, together with the services performed by the staff members, was reasonably calculated to enable the Student to meet the goal of maintaining and improving range of motion. The evidence was clearly conflicting whether the services provided by teachers and aides

were sufficient. The Regional Hearing Officer chose a middle ground between the evidence presented of the necessary amount of service. The contrary evidence presented did not demand a different finding.

The parents' sixth contention is that the training of the teachers and aides is clearly inadequate in the areas of positioning and carrying and is doing active harm to the Student. The parents rely on testimony, which was based upon observations of the Student's classroom during a one-day visit, that the Student was carried improperly, allowed to sit improperly, and not enough attention was paid to the Student's left hand. Not only was the testimony contradicted, thus authorizing the Regional Hearing Officer to reach his own conclusion, but the argument does not explain how the teachers and aides are inadequately trained.

The parents' seventh and final contention is that the Regional Hearing Officer's refusal to give expert status to one of the parents' witnesses is without precedent of legal basis in a due process hearing. They base their argument on the absence of a right to discovery in due process hearings and both parties, therefore, are at an equal disadvantage. They argue that there was, therefore, no basis for the Regional Hearing Officer's refusal to accept the witness as an expert. The Regional Hearing Officer had directed the parties to provide the names of the witnesses and a summary of the expected testimony. The parents did not comply with the directive, and the Regional Hearing Officer ruled during the hearing that the witness' testimony would be received, but not as an expert because the Local Board was deprived of an opportunity to prepare for examination of the witness. The Student's parents have not cited any authority to support their argument or to show why the Regional Hearing Officer's decision is incorrect as a result of his ruling at the hearing. It is apparent that the Regional Hearing Officer gave considerable consideration to the witness' testimony. The State Hearing Officer, therefore, concludes that the Regional Hearing Officer's ruling did not result in any reversible error.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs submitted, the State Hearing Officer is of the opinion that the decision of the Regional Hearing Officer is supported by substantial evidence and no error of law was shown which would warrant reversal. The decision of the Regional Hearing Officer is, therefore,

SUSTAINED.

This 11th day of September, 1987.

L. O. Buckland
State Hearing Officer