

STATE BOARD OF EDUCATION
STATE OF GEORGIA

NICK TONEY,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1976-6
	:	
CITY OF COMMERCE BOARD	:	
OF EDUCATION,	:	
	:	
Appellee.	:	

ORDER

THE STATE BOARD OF EDUCATION having reviewed the record submitted herein and the Report of the Hearing Officer, attached hereto, and, after due consideration, having voted in open meeting,

DETERMINES AND ORDERS, that the decision of the City of Commerce Board of Education be, and is hereby, affirmed.

This 10th day of March, 1977.


RICHARD NEVILLE
VICE-CHAIRMAN FOR APPEALS

STATE BOARD OF EDUCATION
STATE OF GEORGIA

NICK TONEY,	:	CASE NO. 1976-6
	:	
Appellant,	:	
	:	
vs.	:	
	:	
CITY OF COMMERCE BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

Following a hearing duly held on September 2, 1976, the City of Commerce Board of Education, Appellee herein, decided that Nick Toney, Appellant herein, had not earned any credits towards graduation during his junior year at Commerce High School as a result of his suspension from school for the remainder of the school year on April 20, 1976. The original suspension was appealed to and upheld by the State Board of Education in a decision dated May 13, 1976. Nick Toney now appeals the September 2, 1976 decision of the City of Commerce Board of Education (hereinafter "Local Board").

The grounds for the appeal are (1) that the denial of units of credit earned before the suspension exceeded the authority of the Local Board and violated the constitutions of

both the State of Georgia and the United States; (2) that the denial of the credits amounted to excessive punishment and was therefore in violation of the law; and (3) that the denial of a unit of credit in Band deprived the Appellant of his property without due process of law and deprived him of equal protection of law. The Local Board filed a motion to dismiss the appeal to the State Board of Education on the ground that the State Board of Education lacked jurisdiction because (1) the matter was a local problem to be handled by the Local Board, and (2) the Local Board did not take any discretionary action.

PART II

FINDINGS AND CONCLUSIONS

1.

On April 20, 1976, the Appellant was suspended for the remainder of his junior year from Commerce High School because of his possession of marijuana on school property. At the end of the second quarter in school, Appellant had received one A, four B's, and one D. As a result of the suspension, however, Appellant was not awarded any grades for the entire year. The uncontradicted testimony of the principal was that grades in each course are awarded by averaging the grades received at the end of each semester to

determine the final grade for the year in the course. If the student successfully completes the year with a passing grade, then a "Carnegie unit of credit" is awarded to the student. Since the Appellant did not successfully complete the school year, he did not receive grades in any of his courses and consequently did not earn any credits during the school year.

The essence of the motion to dismiss is that the awarding of grades and credits is purely a local matter in which the State Board of Education should not be involved. In other words, a local board of education is more intimately aware of the local situation and the State Board of Education should not interfere.

Additionally, the motion to dismiss urges that under the system used in the Commerce High School, the awarding of credits is automatic without any action on the part of the Local Board. In the absence of any discretionary action by the Local Board, a "local controversy" does not exist and the State Board of Education, therefore, does not have jurisdiction under the provisions of Ga. Code Ann. § 32-910.

The argument of the Local Board has some merit, but the State Board of Education nevertheless does have jurisdiction to hear this appeal. In Boney v. County Board of Education of Telfair County, 203 Ga. 152, 45 S.E.2d 442 (1947), the Court stated that it was the "policy of the

law to give to the local authorities as much power and responsibility as possible for the conduct of the public schools." Id. at 155. The Court went on to say that "the members of the county board, being familiar with the local conditions and circumstances, are in a better position to adjust local matters to existing conditions than the State Board, which is far removed." Id. This language of the Court does not deny jurisdiction to the State Board of Education, but, rather, simply states that the State Board of Education should give serious consideration to the action of the local board of education because of the disparity in knowledge of the local situation. The test set forth in Boney is "whether or not it [the local board] has abused its discretion [which] can be ascertained only by a consideration of the testimony which it heard and upon which its decision is based." Thus, even though the awarding of grades and credits is a local matter and the local board is more intimately aware of the local situation, the State Board of Education does have the jurisdiction to review the actions of the local board of education to determine if there has been an abuse of discretion.

The Local Board then urges that there was not any abuse of discretion since there was no discretionary action taken because the Appellant was automatically denied any credits upon his failure to complete the school year. The

Appellant attempts to counter this argument by asserting that the Local Board did have the discretion to suspend the rule or make an exception for the Appellant. Neither of these arguments, however, reach the question of the jurisdiction of the State Board of Education. The fact remains that the Local Board did hold a hearing, interpreted the school law, and rendered a decision which denied Appellant any credits for the school year. A "local" controversy is one which exists within the particular school system, as opposed to one which involves two or more systems. Cf., Wilson v. Strange, 235 Ga. 156, 158 (1975). Under Ga. Code § 32-910, the State Board of Education, therefore, has jurisdiction to review the actions of the Local Board to determine if there was an abuse of discretion.

2.

The Appellant has alleged three grounds of error on the part of the Local Board. Because the arguments are interrelated, they will be discussed together.

As previously stated herein, the system of awarding credits in the Commerce High School requires a student to successfully complete the entire school year before receiving any credits. As the system was explained in the testimony, successful completion of a course requires the receipt of grades throughout the year that are sufficiently high so that,

when averaged, the final result is a passing grade. The grades received at the end of the first semester are averaged with the grades received at the end of the second semester to determine a final grade for the year. Although not made as such, to the extent Appellant's allegations may be considered as an attack upon the grading system, on its face, or upon its adoption by the Local Board, such allegations are rejected as being unsupported by any principles of law or by the record in this case.

Appellant's complaint is apparently not with the system itself, but with its application to him in this case. Appellant states the issue to be:

" . . . whether the Commerce Board of Education can take from him credit for courses he had completed successfully prior to his suspension. . . ."

This question is grounded on the proposition which Appellant urges, without citing any authority, that a student has a vested property right in the course work that has been completed. Even assuming however, arguendo, that such a property right might exist, the question assumes a factual conclusion which is not supported by the record -- that Appellant completed the course work for which he seeks credit.

The record reveals that Appellant received certain grades over certain grading periods. However, the

record also reveals that successful completion of a grading period is not successful completion of a course. This distinction may be illustrated by analogy to a more common factual situation.

Assume that Appellant had received passing grades during the first semester, as he did. However, further assume that, for reasons other than suspension, Appellant received failing grades during the second semester such that although the course work was completed, it was not completed with a passing grade. Obviously, Appellant would have no claim to any credit and the cause of failure to complete a course does not change this result.

In summary, no authority has been offered or found which would require a school to grant piece-meal credit for grading periods completed without successful completion of the entire course.

The Appellant further argues that the Local Board abused its discretion by not making an exception to the rules for Appellant. The Appellant, however, did not submit any evidence which would establish such a compelling reason for changing the rules such that failure on the part of the Local Board to make a change could be considered to be an abuse of discretion. The results of the suspension follow from the suspension itself, which was upheld by the State Board of

Education, and not from the subsequent action of the Local Board. The subsequent action simply denied remedial relief from the results that flowed from the initial action. The consistent application of a policy, in the absence of any showing that the policy itself is inherently discriminatory or has been discriminatorily applied, does not constitute an abuse of discretion.

Another basis for appeal urged by the Appellant involves the denial of any credit to the Appellant for Band. During the first semester the Appellant received an A in Band. Following Appellant's suspension, the band teacher entered an A grade on Appellant's records for both the third and fourth quarters. The Appellant, therefore, ostensibly received an A grade, with one unit of credit during his junior year, notwithstanding the fact that Appellant was suspended and did not complete the junior year. This grade was still on the records at the time Appellant appealed to the Local Board for credits or carryover of the work that was completed during the first semester in school. When the hearing was completed, the Local Board denied all credits, including the credit for Band. Appellant, therefore, was placed in the anomalous position of having one credit on his records when he requested a hearing for the purpose of attempting to obtain additional credits and then emerging from the hearing without any credits.

The evidence shows that the band instructor had given Appellant a grade for the year despite his suspension. The principal testified that the teachers determine the grade a student receives, but that the teachers did not have the authority to determine if a student earned any credit for the year. The testimony further indicates that the unit of credit should not have been entered on the Appellant's records because of the suspension.


The evidence shows that the unit of credit for Band was an erroneous entry on the Appellant's records. Whether the Appellant earned the credit in Band must, therefore, be determined by the same principle that applies to the other subjects. The Appellant did not successfully complete the school year and, therefore, was not entitled to the unit of credit in Band. The correction of the erroneous entry on the Appellant's records was within the power of the Local Board and was not an abuse of discretion.

PART III

RECOMMENDATION

Based upon the arguments and briefs of counsel, the transcript, and the foregoing findings and conclusions,

the Hearing Officer hereby concludes that the City of Commerce Board of Education had the power and authority to act and that the disallowance of all credits for the year was not an abuse of discretion. The Hearing Officer, therefore, recommends that the decision of the City of Commerce Board of Education be affirmed.



L. O. BUCKLAND
Hearing Officer