

APR 19 1978

STATE BOARD OF EDUCATION
STATE OF GEORGIA

KEMP, BAILEY & BAILEY,	:	
	:	
Appellants,	:	
	:	
vs.	:	
	:	CASE NO. 1978-3
JEFFERSON CITY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

O R D E R


THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decisions of the Jefferson City Board of Education herein appealed from, be, and they are hereby affirmed.

Mr. Kilpatrick was not present.

This 13th day of April, 1978.


 THOMAS K. VANN, JR.
 Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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Appellants,	:	
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	:	
JEFFERSON CITY BOARD OF	:	
EDUCATION,	:	REPORT OF
	:	
Appellee.	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

The Jefferson City Board of Education, hereinafter "Local Board", held a hearing on November 2, 1977, and after the hearing voted to expel three students, Betty Kemp, Pam Bailey, and Marilyn Bailey, hereinafter sometimes referred to as "Appellants," for the remainder of the 1977-1978 school year after finding that they had brought weapons onto the school campus and had been involved in a fight with a fourth student which resulted in the fourth student being injured and requiring medical attention. The appeal was made on the grounds that the decision violated the Appellants' constitutional due process rights because it was excessively severe and the school system did not have any disciplinary rules by

which the Appellants could measure their own conduct and punishment. The basic argument advanced by the Appellants is that the expulsion was permanent because it did not set forth any standards for readmittance. In addition, Appellants argue that they did not know that they could be expelled and the Local Board failed to show that expulsion was necessary.

PART II

FINDINGS OF FACT

As the result of a fight that occurred within the Jefferson High School on October 28, 1977, the Appellants were given written notice of a hearing to be held on November 2, 1977 on the principal's recommendation of expulsion for the remainder of the school year. The Local Board convened the hearing on November 2, 1977, with both the school system and the Appellants represented by legal counsel.

Following the hearing, the Local Board found that the Appellants were involved in a fight with another student on October 28, 1977. The other student "was struck with a weapon or an attempt was made to strike such student with a weapon and such student was knocked on the floor and was struck and beaten and bitten by each of the . . . [Appellants] and . . . efforts were made by each of the students to stop

her and cause her severe bodily injury. . . . [As] a result of the altercation the victim received scratches and was bitten and was bruised about her person requiring medical attention." The Local Board also found that Marilyn Bailey and Betty Kemp had brought large switchblade knives to school. The knives were not used during the fight, but Marilyn Bailey had also brought a stick or a metal object to the school which was used by Pam Bailey in the fight. The Local Board found that the Appellants had anticipated the fight and armed themselves accordingly. It was also determined that both fighting on the campus and the bringing of weapons onto the campus were against school policy and that the Appellants were aware of these policies and the possibility of suspension or expulsion.

As a result of its findings, the Local Board expelled the Appellants for the remainder of the 1977-1978 school term. The Local Board also added:

"Each of these students upon showing conduct consistent with an awareness of the impropriety of their conduct, evidence of compliance with law and a willingness to abide by rules and regulations of Jefferson High School and this Board of Education may apply for readmittance to Jefferson High School prior to the academic year 1978/1979 and this Board will consider at such time application for admission is made as to whether each of these students individually or collectively may be readmitted."

The Appellants do not deny that they were involved in a fight, but they argue that there were extenuating circumstances which cause the decision of the Local Board to be excessive.

PART III

CONCLUSIONS OF LAW

The Appellants argue that the decision made by the Local Board amounts to permanent expulsion because no standards were set out by which they could determine if they would be readmitted to the school for the 1978-1979 school term. They then argue that the punishment of permanent expulsion does not bear a relationship to valid school disciplinary concerns and, therefore, violates the substantive norms of due process of the Fourteenth Amendment to the Constitution of the United States.

The Appellants' argument rests on a determination that the students were permanently expelled. In the opinion of the Hearing Officer, however, such a conclusion is premature and not warranted by the decision of the Local Board. The specific decision of the Local Board was that the Appellants would be expelled for the remainder of the 1977-1978 school term. The Local Board had the power and authority

to make such a decision in the execution of their responsibility to operate the school system. Ga. Code Ann. §32-912. Upon Appellants' application to be readmitted, it is the opinion of the Hearing Officer that the Local Board would have to show that the Appellants had violated the standards required of students attending the school before readmittance was denied. The Appellants cannot be held to some higher standard than required of the existing student body, nor can the Local Board shift the burden of proof to the Appellants through operation of their decision. It must, therefore, be concluded that the decision of the Local Board was a decision to expel the students for the remainder of the 1977-1978 school term. The remainder of the Local Board's decision merely serves the purpose of informing the students that they are still subject to the rules and regulations of the school system, and it does not amount to permanent expulsion. The Appellants' substantive due process rights, therefore, have not been violated.

The Appellants also argue that the school system did not have a disciplinary code and system of sanctions so there were no clear standards by which to judge the appropriateness of a punishment imposed for infraction of informal rules which were never communicated to the students through any formal program. There is evidence in the record, however, which supports the Local Board's finding that the

policies of the school system were communicated to the students and that the Appellants were aware that if they engaged in fighting they could be expelled. Written rules and regulations were not submitted into evidence, but there was testimony from the principal, the physical education teacher, and one of the parents of Appellants which indicates that Appellants were aware or would have been aware that they could be expelled for fighting on the campus. Where there is any evidence to support the decision of a local board of education, the State Board of Education will not disturb that finding. Antone v. Greene County Board of Education, Case No. 1976-11.

It is the conclusion of the Hearing Officer that Appellants were granted all of the required notices, and given a proper notice to defend against the charges. The Local Board was acting within its power and authority when it decided to expel Appellants for the remainder of the 1977-1978 school term. The decision of the Local Board was not arbitrary and capricious, but was supported by the evidence presented.

PART IV
RECOMMENDATION

Based upon the record submitted, the briefs and arguments of counsel, and the above findings and conclusions,

the Hearing Officer recommends that the decision of the Jefferson City Board of Education to expel the Appellants for the remainder of the 1977-1978 school term be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer