

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHNNY LEE OWENS, :
 :
 Appellant, :
 :
 vs. : CASE NO. 1978-6
 :
 BURKE COUNTY 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 decision of the Burke County Board of Education herein appealed from, be, and it is hereby reversed.

This 12th day of June, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHNNY LEE OWENS,	:	CASE NO. 1978-6
	:	
Appellant,	:	
	:	
vs.	:	
	:	
BURKE COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

On January 17, 1978, the Burke County Board of Education (hereinafter "Local Board") expelled Johnny Lee Owens (hereinafter "Appellant") after a hearing held the same day. There were not any charges made against Appellant and the Local Board did not make any findings of fact, but it appears from the record that the expulsion was made because the principal thought that Appellant's mother could no longer control him. The appeal to the State Board of Education asserts that (1) the expulsion is unconstitutional because it denies Appellant equal protection of the law; (2) expulsion is an extremely harsh penalty; (3) the expulsion is unconstitutional because Appellant was denied proce-

dural due process when the Local Board did not take Appellant's handicap into consideration, and (4) the State Board of Education and the Local Board are in violation of their obligations under the Federal Education of the Handicapped Act in failing to guarantee proper due process hearings in all cases involving a change in educational placement. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On January 4, 1978, Appellant's mother received a letter from the principal of the school Appellant attended. The letter stated in part:

"As a result of the discussion in my office today and the attitude of your son Johnny, I think that it is unwise to send him back to Blakeney Junior High School when his suspension expires."

The letter went on to say that the principal would recommend Appellant's permanent expulsion from school at the January 10, 1978 meeting of the Local Board and ended with the suggestion that Appellant's mother attend the meeting. The letter did not contain any charges and Appellant was not notified of any witnesses that would appear.

The record does not contain any evidence concerning a January 10, 1978 meeting. The hearing before the Local Board was held on January 17, 1978. The Local Board made its decision to permanently expel Appellant from the Burke County School System on the same day. The appeal to the State Board of Education was filed with the Superintendent on January 20, 1978.

The record does not disclose that Appellant was ever charged with anything. Additionally, the Local Board did not make any findings of fact. The reason for the expulsion, therefore, has to be obtained from a review of the testimony given at the hearing. The transcript shows that Appellant was a seventeen year old ninth grader. At the time of the hearing, he was under suspension for being involved with some other boys in a firecracker-throwing incident inside the school building. All of the other boys were also suspended. The record indicates that the suspensions were for ten days.

The principal of the school made it a practice that whenever students were suspended, he would call in the parents and talk with them. If the parents concurred with the principal, then the student was readmitted. In the circumstances of the instant case, the principal, Appellant, and Appellant's mother met to discuss the suspension arising from

the firecracker-throwing incident. As a result of the conference, the principal decided to seek Appellant's permanent expulsion because the principal thought that Appellant's mother no longer had any control over him. During the conference, Appellant did not sit down at one point when he was about to cry. Appellant also became angry when the principal told Appellant's mother that she was not going to run the school. Appellant thought the principal was being disrespectful to his mother and he told the principal not to speak to his mother in a loud manner. Also during the conference, Appellant muttered some profanity which the principal testified he overheard even though the principal did not believe it was overheard by Appellant's mother. Appellant's mother testified that she did not have any problems in getting Appellant to obey her.

Evidence was admitted that Appellant had been given seven notices of suspension for various reasons in the prior two years. Appellant's academic records were also placed in evidence. From the nature of the reasons for the prior suspension notices and Appellant's academic record, it does not appear that Appellant was a severely emotionally handicapped child, but instead, could function in the normal classroom setting. The school system, however, has never tested Appellant to determine if he has any special learning disabilities that might need attention.

PART III

CONCLUSIONS OF LAW

The arguments advanced by Appellant do not establish any basis for reversing the decision of the Local Board except in the broadest sense that Appellant was denied his due process rights. The local system, however, has the burden of proof and this burden was not met in the instant case.

The record does not disclose that any charge was ever made against Appellant. The only reason set forth for the recommendation that Appellant be permanently expelled from school was because his mother could no longer control him. Assuming that this is a sufficient reason to permanently expel a student, there is no evidence in the record that the mother could not control Appellant. The fact that he did not sit down one time when told to do so by his mother does not establish that she has lost control. His muttering of profanity that his mother could not hear does not establish that she has lost control. Also, Appellant's coming to the defense of his mother and telling the principal not to talk to his mother in a loud voice does not establish that she had lost control. The only basis set forth for determining that Appellant's mother had lost control over him was the principal's thoughts. What one person

thinks about another, however, does not establish something as fact.

It could be argued that the Local Board looked at the number of previous suspension notices and determined that the Appellant's mother had lost control over him. However, there was not any evidence given which established the validity or circumstances of the notices and they do not, by themselves, establish a lack of control.


Appellant was not expelled for the firecracker-throwing incident. The punishment for that incident was a ten day suspension which was given to Appellant and to the other boys involved in the incident.

The Hearing Officer concludes that the Local Board did not carry the burden of proof in this case.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions and the record submitted, the Hearing Officer recommends that the decision of the Burke County Board of Education to permanently expel Appellant be reversed because of the failure to carry the burden of proof.



L. O. BUCKLAND
Hearing Officer