

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALONZO BRACELEY, :  
 :  
 Appellant, :  
 :  
 vs. : CASE NO. 1978-7  
 :  
 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 affirmed.

Mrs. Huseman and Mrs. Oberdorfer dissented.

This 12<sup>th</sup> day of June, 1978.

  
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THOMAS K. VANN, JR.  
Vice Chairman for Appeals

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	:	
BURKE COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

On January 24, 1978, the Burke County Board of Education (hereinafter "Local Board") voted to expel Alonzo Braceley (hereinafter "Appellant") from school. Appellant had been charged with fighting and hitting a bus driver. 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) the expulsion is an extremely harsh penalty; (3) the expulsion is unconstitutional because Appellant was denied procedural due process when the Local Board did not take Appellant's handicaps into consideration, and (4) the expulsion is unconstitutional because the Local

Board failed to hold a timely hearing, did not make a timely decision, and did not make findings of fact. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II  
FINDINGS OF FACT

On October 5, 1977, Appellant's mother was notified in writing that a recommendation would be made to the Local Board that Appellant be expelled from school for hitting a bus driver. The letter informed the parent that the parent could have legal counsel present and a list of the witnesses was given. The Local Board held a hearing on the charges and recommendation on October 11, 1977. On January 24, 1978, the Local Board issued a decision that Appellant be expelled from the Burke County School System. An appeal to the State Board of Education was filed on January 27, 1978.

Appellant was not represented by counsel at the hearing and the Local Board did not make any findings of fact. The testimony presented at the hearing was disjointed and it has been necessary to examine the transcript closely in order to determine the sequence of events.

On September 23, 1977, Appellant was suspended from school for two days by the Assistant Principal. However, neither the Principal nor the Appellant's parent were notified of the suspension and the suspension did not go into effect immediately. In the afternoon of September 23, 1977, Appellant and his sister were riding home on the bus. Appellant's sister was told by the bus driver to move from one seat in the bus to another seat. Appellant's sister was slow in responding to the bus driver's command and the bus driver muttered, "Mean bitch." Appellant overheard the bus driver and apparently objected to the statement. Over the bus driver's objections, Appellant remained on the bus and returned to the school. The bus driver notified the principal who in turn talked with Appellant. Appellant was told that he was suspended from riding the bus until further notice. Appellant's mother, however, was not notified about the suspension from riding the bus.

On the next day, September 24, 1977, the Principal notified the bus driver that the suspension was in effect. The Principal also talked with Appellant's sister and some other students about what had happened. That night, Appellant's sister informed him that the Principal said he could ride the bus.

On the morning of September 24, 1977, Appellant's mother told him to board the bus. As Appellant began to get onto the bus, the driver told him that he could not enter. Appellant testified that he thought the bus driver was lying because of the conversation with his sister and the fact that his mother had told him to get onto the bus. As a consequence, he continued to start mounting the steps leading into the bus. The driver was inside the bus and when Appellant started up the steps, the driver pushed him in an attempt to get him off the bus. When this happened, Appellant swung his fist and hit the bus driver. The bus driver then was successful in pushing Appellant out of the bus and he drove off to finish his route.

It is unclear whether Appellant hit the bus driver more than once. In any event, the driver received a bump on his forehead, a "black" eye, and a "knock" on his nose.

It was not until the next day, September 26, 1977, that Appellant's mother was notified about the two-day suspension imposed on September 23, 1977. The suspension was for the period September 27 and 28, 1977. On September 28, 1977, Appellant's mother received a written notice that Appellant was suspended from riding the bus for the remainder of the year and that she could meet with the Local Board on October 11, 1977 to discuss the matter. Later, on October 5,

1977, Appellant's mother received written notice that a recommendation would be made to the Local Board on October 11, 1977 to expel Appellant.

The record discloses that the Local Board had adopted a policy, issued September 1, 1976, which provided that students could be expelled for physically attacking a school employee. The record does not disclose that Appellant was physically, mentally, or emotionally handicapped.

### PART III

#### CONCLUSIONS OF LAW

The appeal sets forth four arguments why the decision of the Local Board should be reversed: (1) Appellant was emotionally disturbed and the failure of the Local Board to identify him as such and to meet his special needs instead of expelling him was a denial of his right to equal protection of the law; (2) expulsion from public education is an extremely harsh penalty; (3) the Local Board failed to consider Appellant's handicap and special education needs and thus deprived Appellant of his right to procedural due process, and (4) the Local Board and the State Board of Education are in violation of their obligations in failing to guarantee proper due process hearings when there was a change in educational placement.

Appellant's first argument is that the fact that he was involved in a disciplinary proceeding and had failed one grade establishes that he is emotionally disturbed. Because he had not been tested, his placement in the regular classroom or lack of some special handling caused him to be in the wrong environment which caused his behavioural problems. The Appellant's argument, however, is not supported by the record, nor is there any requirement for a placement hearing before disciplinary measures can be instituted. The record does not show that Appellant was emotionally disturbed or suffering from any handicap.

Appellant's argument that expulsion is an extremely harsh penalty is not one that addresses itself to review by the State Board of Education. The control and management of the local schools has been left with the local boards of education. Boney v. County Bd. of Educ. of Telfair, 203 Ga. 152 (1947); Ga. Code Ann. §§ 2-5301, 32-901. The State Board of Education, therefore, will not review the nature of punishment if such punishment is statutorily authorized or not prohibited.

Appellant makes a third argument which is similar to the first in that he argues that since a placement hearing was required, the failure to hold a placement hearing resulted in him being denied his due process rights. As

stated above, however, there is no requirement for the local system to hold a hearing on placement when it is faced with a discipline question.

The State Board of Education follows the rule that if there is any evidence to support the decision of the local board of education, then that decision will not be disturbed on review. Antone v. Greene County Board of Education, Case No. 1976-11. In the instant case, there is evidence that Appellant struck the bus driver and the school system had regulations which provided that a student could be expelled if the student physically attacked a school employee. Even though it appears that Appellant had valid reasons for believing he could enter the bus after his mother told him to, and there was also apparent ill-will existing between the bus driver and Appellant because of the bus driver's comment about "mean bitch", the Local Board could find that Appellant had violated the regulations of the school system, notwithstanding the fact that there was evidence that the bus driver pushed Appellant to set off the incident. The decision and the type of discipline or punishment imposed is statutorily left with the local board of education.



PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs and oral arguments of counsel, it is the opinion of the Hearing Officer that there was evidence available to the Burke County Board of Education which would permit it to decide to expel Appellant. The Hearing Officer, therefore, recommends that the decision of the Burke County Board of Education be sustained.

*L. O. Buckland*

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L. O. BUCKLAND  
Hearing Officer