

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LEMUEL CHARLES, :
 :
 Appellant, :
 :
 vs. : CASE NO. 1978-12
 :
 DEKALB COUNTY BOARD OF :
 EDUCATION, :
 :
 Appellee. :


O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and after vote in open meeting,

FINDS that the issue appealed is moot because the school term was completed before the appeal was heard by the State Board of Education. It is, therefore,

ORDERED, that the appeal submitted herein be, and is hereby, dismissed.

This 21st day of August, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

LEMUEL CHARLES,	:	CASE NO. 1978-12
	:	
Appellant,	:	
	:	
vs.	:	
	:	
DEKALB COUNTY BOARD OF	:	
EDUCATION,	:	REPORT OF
	:	
Appellee.	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

On March 10, 1978, the DeKalb County Board of Education (hereinafter "Local Board") voted to expel Lemuel Charles (hereinafter "Appellant") for the remainder of the 1977-78 school year and require him to show cause "why he should be reconsidered for admission to the DeKalb County School System no earlier than the Fall Quarter of 1978." Appellant was expelled on charges of threatening and attempting to assault another student with a dangerous weapon. The appeal to the State Board of Education alleges both procedural and substantive errors. The Hearing Officer recommends that the Local Board be sustained in part and reversed in part.

PART II
FINDINGS OF FACT

On February 8, 1978, Appellant was involved in an altercation with some other students. On February 20, 1978, a hearing was held before a student evidentiary hearing committee. Appellant then requested a hearing before the Local Board. The hearing was held on March 10, 1978 and a written notice of the Local Board's decision was sent to Appellant's guardian on March 15, 1978. An appeal to the State Board of Education was filed with the local superintendent within thirty (30) days of such notification.¹

During the hearing, it was established that Appellant threw a fork as a weapon at another student and threatened to kill yet another student. During this process, a teacher who intervened narrowly avoided injury, although the teacher testified that she did not feel directly threatened by Appellant.

There was also evidence that Appellant had been involved in sixteen prior incidents during the school year which caused him to be seen by the principal. He was suspended two or three times for these offenses. During the previous

¹The appeal was not dated, but subsequent correspondence included in the record establishes that the appeal was filed by April 7, 1978.

year, Appellant had been suspended thirteen or fourteen times. The Local Board did not permit any other evidence pertaining to behavioral disorders and the application of Public Law 96-142.

PART III

CONCLUSIONS OF LAW

It was agreed by counsel for both parties that the issue concerning expulsion for the remainder of the 1977-78 school term was moot because the term had ended before the appeal was heard. The only portion of the Local Board decision remaining in issue is the part requiring Appellant to show cause as to why he should be reconsidered for admission to the DeKalb County School System.

It is clear from the record that the Local Board was authorized to find that Appellant had threatened other students and was endangering himself and others. However, no evidence regarding Appellant's emotional behavior was permitted during the hearing. Appellant's history of disruptive behavior throughout the past two school terms does give some indication that Appellant has some problems which may be emotional. It does not appear in the record whether Appellant has been observed or tested to determine if he is eligible for special education services.

Ga. Code Ann. §32-605a, cited by Appellant, provides in part that:

"All children. . .who have special education needs. . .shall also be eligible for special education services. . . Children. . .with special needs are those who have emotional. . .deviations. . . to the degree that there is interference with school achievements or adjustments, or prevention of full academic attainment and who require modifications or alterations in their educational programs. This definition includes children who are. . .behaviorally disordered. . . ."

The Georgia Special Education Annual Program Plan for Fiscal year 1978 included within the definition of "emotionally disturbed", children who had:

"29. . .maladaptive reactions toward peers and authority figures;. . .socio maladjustment as evidenced by adjudication through the courts or other involvement with correctional agencies as long as such social maladjustment is due to an emotional disturbance or a history of school suspension or expulsions due to an emotional disturbance." Appendix B, Definitions.²

Both the statute and the regulation identify the maladapted student as someone who may be eligible for special education services. Because there was evidence that Appellant has exhibited behavior which may place him in

²This definition was amended in the Program Plan for Fiscal Year 1979 to include the sentence: "It does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed." Definition 31, Appendix B, Amended Annual Program Plan For Fiscal Year 1979.

that class requiring special education services, he should be evaluated so that a determination can be made if he is eligible. This does not answer the question of whether the Local Board can require some affirmation by Appellant that he wants to complete his education if it is determined that he does not require special education services. The question, however, was not raised in this case and was not briefed or argued by either side. It is, therefore, a question which should await a proper presentation.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record, and the briefs and arguments of counsel, it is the opinion of the Hearing Officer that the decision of the DeKalb County Board of Education to suspend Appellant for the remainder of the 1977-78 school term is moot, but the decision to require Appellant to show cause why he should be readmitted during the 1978-79 school term was improper because an evaluation had not been made of Appellant's special education needs.

The Hearing Officer, therefore, recommends that the decision of the DeKalb County Board of Education be

affirmed in part and reversed in part by sustaining the decision to suspend Appellant for the remainder of the 1977-78 school term, but reversing the requirement for any affirmative action on Appellant's part to gain readmittance for the 1978-79 school term in the absence of any evaluation of Appellant's special education needs.



L. O. BUCKLAND
Hearing Officer