

STATE BOARD OF EDUCATION
STATE OF GEORGIA

DEBBIE LEE WELLS, et al., :
 :
 Appellant, :
 :
 vs. : CASE NO. 1978-21
 :
 TATTNALL 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 Tattnall County Board of Education herein appealed from, is hereby affirmed.

Mrs. Huseman was not present.

This 9th day of November, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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Appellant,	:	
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TATNALL COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	REPORT OF HEARING OFFICER

PART I
SUMMARY OF CASE

This is an appeal from a decision of the Tattnall County Board of Education (hereinafter "Local Board"), to deny Debbie Lee Wells and others (herinafter "Appellants") a diploma for failure to obtain a satisfactory score on an achievement test. The appeal complains of several defects in the testing criteria and the manner in which the Local Board conducted the testing. The Hearing Officer recommends that the decison of the Local Board be upheld.

PART II

FINDINGS OF FACT

In May, 1976, the Local Board adopted a policy of requiring all students in the Tattnall County School System to take an achievement test. The school system selected the

California Achievement Test (hereinafter "CAT") as the standard test and required a minimum achievement level of 9.0 in order for a student to receive a diploma. Those seniors who did not receive the minimum grade could attend graduation and receive a certificate of attendance instead of a diploma. They could retake the test and if they subsequently were able to attain a minimum score on the test, they could receive a diploma.

Beginning in 1976, the Local Board began informing the students and their parents about the new policy and the additional requirements for graduation. The policy was not applied to the graduating seniors in 1976 or 1977. The 1978 seniors began taking the achievement test during their 10th year in school. The Appellants, some of whom were among the graduating seniors in the class of 1978, did not score a satisfactory level of achievement. They requested an adversary hearing before the Local Board. The hearing was held on May 11 and May 15, 1978. The Local Board issued its decision on May 22, 1978. The Local Board found that:

1. The policy was "adopted in an effort to bring public schools within Tattnall County, Georgia up to a higher standard, specifically additional requirements for a diploma would apply to them in 1978."
6. "...the California Achievement Test is a legitimate testing device designed to assess the level of achievement attained by students."
7. "[The students who do not receive a diploma]...will not be prevented from

participating in graduating exercises and will in fact be awarded a certificate of attendance."

8. "...the student may elect to return [to] the school for an additional year and take remedial instruction until he successfully scores on the CAT at the required minimum level...a student may participate in graduating exercises, undertake a course of summer remedial study, successfully score at the required level on the CAT and receive a high school diploma after the fact of graduation...a student can agree to accept the Certificate of Attendance in lieu of the diploma. ...[and] a student can at any time take and successfully complete the GED examination and be awarded a diploma."

The appeal complains that the decision of the Local Board violates the constitutional rights of the Appellants by denying them due process and equal protection of the laws, that the application of the achievement standards to Appellants was arbitrary and capriciously applied, and that the selection of the California Achievement Test and the arbitrary selection of a beginning date for application was illegal.

PART III

CONCLUSIONS OF LAW

The Appellants argue that they have a property right to a public education that is protected by the due process and equal protection clauses of the Constitution of the United States. They then argue that the requirement to

attain a certain level of achievement on the CAT is not a statewide standard and it has not been approved by the State Board of Education. Additionally, the requirement was never applied to any previous graduating class in the Tattnall County School System.

The Appellants then argue that the requirement to attain a satisfactory level on the CAT was done arbitrarily and without any formal action on the part of the Local Board. Additionally, Appellants urge that the motion adopted by the Local Board provided that the testing would go into effect at the end of the 8th grade, that no student would be permitted to enter high school who had not attained the satisfactory level of achievement, and since the senior Appellants were in the 10th grade at the time the policy was adopted, the policy does not, therefore, apply to them.

Appellants point to §32-408 of the Georgia Code and argue that the policy adopted by the Local Board is illegal because it was never approved by the State Board of Education. They contend that since standards must be established by the State Board of Education, the Local Board was

without the power to set any additional standards and their action was, therefore, illegal.

The final contention of Appellants is that the CAT is an improper method of determining if the students have attained a particular level of achievement. They point to the fact that the students received grades from their teachers which did not give any indication that they were in danger of not obtaining their diploma, thus lulling the parents into a false sense of security, i.e., the parents would look at the students' report cards, see the passing grades they were making, and be unaware that the students were not achieving at the level required of them in order to obtain a diploma at graduation.

There is no question that the right to an education is a property right that cannot be denied without due process of law. In the instant case, the students and their parents were notified that the Local Board was adopting the policy of requiring the students to attain a certain level on the CAT, they were notified that there was a danger that they would not receive their diploma if they did not upgrade their scores, and they were given the opportunity to take remedial courses in order to increase their level of achievement. Additionally, the Local Board provided safeguards to the students which permitted them to obtain their diploma at any time that they were able to attain the required level of achievement by giving them the opportunity

to retake the examination at any time. Additionally, the students were given the test three (3) times before their graduation. The transcript shows that the Local Board was aware of the implications of the policy and made every effort to ameliorate the impact of the policy by delaying the implementation for two years, thus giving the citizens and students ample opportunity to complain or comply. The Hearing Officer, therefore, concludes that the Appellants were afforded due process in that the plan was communicated to them, they were not permanently denied a diploma, and they were given a hearing on the matter before the Local Board.

With respect to Appellants' contention that the Local Board did not officially adopt the policy and the implementation by the administration was, therefore, illegal, the transcript shows that the Local Board was aware of the implementation by the administration. Additionally, the Local Board found, as a matter of fact, that they had adopted the policy at their March, 1976 meeting. If there is any evidence in the record to support the finding of a local board of education, the State Board of Education will not disturb that finding upon review. Antone v. Greene County Board of Education, Case No. 1976-11. The Hearing Officer, therefore, concludes that the Local Board did

officially adopt the policy and that the policy was legally implemented by the administration.

The Hearing Officer finds it inconsistent that a student could receive passing grades on a report card, thus indicating that the student is achieving at the expected level, and still fail to score high enough to indicate a level of achievement that is four (4) years less than the grade the student is completing. The lack of understanding and the frustration of the parents was clear from the transcript and is understandable. Nevertheless, the Local Board, through the administration, attempted to fully inform all of the parents and the students that the policy could result in the failure of the students to receive their diploma. Some of the Appellants were enrolled in remedial classes, so they cannot say they were unaware they were performing lower than grade level. The lack of understanding on the part of the parents and the students does not raise the situation to the level of being a reversible error on the part of the Local Board. The Hearing Officer, therefore, finds that the implementation of the policy by the Local Board, and the manner in which it was implemented, was legal.

With respect to Appellants' argument that the State Board of Education did not approve of the policy, Ga. Code

Ann. §32-408 provides:

"The State Board of Education shall provide rules and regulations prescribing a course of study for all common and high schools receiving state aid and may, in their discretion, approve additional courses of study set up by the local units of administration...."(emphasis added).

Ga. Code Ann. §32-408 does not address itself to the question of whether a local board of education can impose additional requirements on its students in order to grant a diploma. The section is discretionary in permitting the State Board of Education to approve "additional courses of study", but the instant case involves additional requirements for awarding a diploma rather than additional courses of study. A local board of education has the power to impose its own requirements for graduation on its students without obtaining the prior approval of the State Board of Education. See, e.g., Toney v. City of Commerce Board of Education, Case No. 1976-6. The Hearing Officer, therefore, concludes that the imposition of the standards of achievement by the Local Board did not exceed the authority of the Local Board.

PART IV

RECOMMENDATION

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

the Hearing Officer is of the opinion that the Tattnall County Board of Education could adopt an achievement standard policy in order for students to graduate, that the policy was properly instituted and the parents and students given notice. The Hearing Officer, therefore, recommends that the decision of the Tattnall County Board of Education be upheld.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer