

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID P. BARKER,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1978-34
	:	
TWIGGS COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

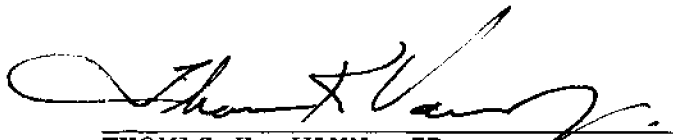
O R D E R

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 motion to set aside the decision of this State Board is denied.

This 14th day of February, 1980.



THOMAS K. VANN, JR.

Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

DAVID P. BARKER,	:	CASE NO. 1978-34
	:	
Appellant,	:	
	:	
vs.	:	REPORT OF
	:	
TWIGGS COUNTY BOARD	:	HEARING OFFICER
OF EDUCATION,	:	
	:	
Appellee.	:	

On February 8, 1979, the State Board of Education affirmed a decision of the Twiggs County Board of Education (hereinafter "Local Board") to dismiss David P. Barker (hereinafter "Appellant"). Five members of the State Board of Education voted to affirm, three members dissented, and two members were absent. On January 14, 1980, Appellant filed a "motion to set aside decision" with the State Board of Education on the ground that a majority of the State Board of Education did not vote to affirm the decision of the Twiggs County Board of Education. The Hearing Officer recommends that the motion be denied.

Appellant contends that under Ga. Code Ann. §32-910 an affirmative decision must be made by the State Board of Education in order to uphold a decision of a local board of education. Appellant then points out that Ga. Code Ann. §102-102(5) requires a majority vote in order for the State Board of Education to take any affirmative action, and the

vote of five members does not constitute the vote of a majority of ten total members. Appellant, therefore, argues that the decision to affirm the Twiggs County Board of Education is void and should be set aside.

The statute upon which Appellant relies, Ga. Code Ann. §102-102(5), provides:

"A joint authority given to any number of persons, or officers, may be executed by a majority of them, unless it is otherwise declared."

The Hearing Officer is of the opinion that the statute is inapplicable when the State Board of Education is sitting in its quasi-judicial role of an appellate body reviewing the decisions of local boards of education. When it is reviewing the decisions of local boards of education, the State Board of Education can either affirm or disaffirm the local board's decision. The State Board of Education, however, is composed of ten members so that on any particular issue, it could have an evenly divided vote. The General Assembly has provided that when the Supreme Court might be faced with a similar situation, an evenly divided vote will act to affirm the decision of the lower court. Ga. Code §24-4015. It is immaterial in deciding the applicability of Ga. Code Ann. §102-102(5) whether an evenly divided vote acts as an affirmance or disaffirmance of the decision of a local board of education because the statute would require a majority vote one way or the other in order for there to be a decision by the State Board of Education. In other

words, if the statute was applicable, it would be necessary for there to always be at least six members of the Board who were willing to vote in the same manner in order for there to be a decision to either uphold or reverse the local board's decision. Since the State Board of Education is composed of an even number of persons, such a result may not obtain in any given situation. It is, therefore, clear that the concurring vote of five members of the State Board of Education is sufficient to result in a decision and it is unnecessary to have a majority of the ten vote in the same manner. The Hearing Officer, therefore, can only conclude that the statute is not applicable when the State Board of Education is sitting in its quasi-judicial role of an appellate body reviewing the decisions of local boards of education.

Appellant has also had an opportunity to raise the issue of whether the decision of the State Board of Education was void by appeal to the Superior Court of Twiggs County. Ga. Code Ann. §32-910. The records of the State Department of Education show that the record of the case was certified to the Superior Court on February 27, 1979. Any error on the part of the Superior Court in deciding whether the decision of the State Board of Education was void would be appealable to the appellate courts of the State. There has not been any indication that the Superior Court decided that the decision of the State Board of Education was void or incorrect. The Hearing Officer

concludes that Appellant abandoned this issue by not raising it in an appeal to the Superior Court of Twiggs County and it is now too late to resurrect the issue.

RECOMMENDATION

Based upon the foregoing, the Hearing Officer is of the opinion that the basis for Appellant's motion is not applicable to the decision entered by the State Board of Education, the decision is not void, and it should stand as entered. The Hearing Officer, therefore, recommends denial of Appellant's "motion to set aside decision."

L. O. Buckland

L. O. BUCKLAND
Hearing Officer

STATE BOARD OF EDUCATION
STATE OF GEORGIA

MILTON DOW OWENS, :
 :
 Appellant, :
 :
 vs. : CASE NO. 1978-35
 :
 BLECKLEY 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 Bleckley County Board of Education herein appealed from, is hereby affirmed.

Mr. McClung and Mrs. Huseman were not present.

This 8th day of February, 1979.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MILTON DOW OWENS, :
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 Appellant, :
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 vs. : CASE NO. 1978-35
 :
 BLECKLEY COUNTY BOARD OF :
 EDUCATION, :
 :
 Appellee. :

PART I

SUMMARY OF APPEAL

This is an appeal by Milton Dow ("Mike") Owens (hereinafter "Appellant"), a student, from a decision on October 4, 1978 by the Bleckley County Board of Education (hereinafter "Local Board") to expel him for the remainder of the 1978-79 school term for "marijuana involvement." The appeal was made to the State Board of Education by Appellant's parents because they believe the decision of the Local Board is too harsh and will result in their inability to get him back to school next year. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II

FINDINGS OF FACT

On October 4, 1978, the local superintendent sent a letter to Appellant's mother that Appellant was charged with possession of marijuana found on him the previous day by Appellant's principal. The superintendent wrote that the Local Board would hear the charges at its October 5, 1978 meeting and that Appellant could have an attorney present. The hearing was held on October 5, 1978 and the Local Board voted to expel Appellant for the remainder of the school term. On October 6, 1978, Appellant was given written notice of the Local Board's decision. Appellant filed an appeal to the State Board of Education with the local superintendent on November 1, 1978.

At the hearing before the Local Board, Appellant was not represented by counsel and an official court reporter was not present. The transcript was prepared by Appellant and the superintendent from memory. Also, the Local Board did not issue any findings of fact with its decision.

The transcript discloses that the principal was informed on October 3, 1978 that some students were smoking marijuana within the school building. A Local Board policy prohibited the possession, sale, use or transmission of "any drug of abuse" on the school grounds at any time and also stated that violation of the policy "may result in

expulsion from school for the remainder of the year." Similarly, the student handbook stated that "[v]iolation of this regulation will result in recommendation of expulsion from school." The principal was informed that Appellant was seen in an area where marijuana smoke was smelled. The principal called Appellant and searched him. A marijuana leaf was discovered in Appellant's billfold.

Appellant's mother contended before the Local Board that the leaf of marijuana was a status symbol and nothing more. Appellant admitted that he had tried to smoke marijuana at one time, but he did not like it. Appellant, however, admitted that he had the leaf of marijuana in his billfold and he was aware of the policies of the Local Board governing the possession of drugs.

PART III

CONCLUSIONS OF LAW


In matters of local school policy, the local board has the authority to establish the rules and regulations governing the operation of the local school system. Ga. Code Ann. §32-901. In a case such as this appeal, where there are regulations prohibiting certain conduct and the conduct is admitted, the State Board of Education is required to accept the decision of the local board of education even if the members of the State Board of Education should disagree with the decision.

It appears from the record that Appellant was not denied any of his due process rights by the school system. The decision cannot, therefore, be reversed because of any constitutional defects in the procedures.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions and the record submitted, it is the opinion of the Hearing Officer that the Local Board did not deny Appellant any of his due process rights and the Local Board had the power, authority and discretion to issue its decision. The Hearing Officer, therefore, recommends that the decision of the Bleckley County Board of Education to expel Appellant for the remainder of the school term should be upheld.



L. O. BUCKLAND
Hearing Officer