

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BECKY STONECYPHER,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1979-3
	:	
WHITE 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 White County Board of Education herein appealed from is hereby reversed.

Messrs. Foster and Smith dissented.

This 12th day of April, 1979.



THOMAS K. VANN, JR.
Vice Chairman for Appeals

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

PART I

SUMMARY OF APPEAL

This is an appeal by a student, Becky Stonecypher (hereinafter "Appellant"), from a decision by the White County Board of Education (hereinafter "Local Board") to suspend her from school during the period October 24, 1978 through November 21, 1978 on the grounds she violated Local Board Policy concerning conduct or behavior "by having knowledge of and being present with a group of students at which time illegal drugs were used." Appellant has appealed on the grounds that the policy is vague, ambiguous, and capricious and therefore unconstitutional. Additionally, Appellant contends that the evidence presented failed to support the charge against her. Appellant also claims that procedural errors were committed following the presentation of the evidence.

The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II
FINDINGS OF FACT

On October 16, 1978, the Local Superintendent sent a letter to Appellant's parents which stated that he was recommending discipline of Appellant to the Local Board at its October 23, 1978 meeting. The Superintendent advised that Appellant was charged with violating a policy of the Local Board "concerning conduct or behavior which seriously damages the good order and human relations of the school at White County High School on Friday, October 13, 1978." The parents were advised that long-term suspension would be recommended and that they could have an attorney present. Additionally, they were given the names of the witnesses who would appear at the meeting. The Local Board held the hearing on October 23, 1978. At the conclusion of the hearing and after another hearing involving other students, the Local Board voted to suspend Appellant and four other students for the remainder of the fall quarter so that they would be eligible to reenter school on November 21, 1978. The Local Board did not make any findings of fact to support its decision. The Local Superintendent gave Appellant's parents written

notification of the decision on the following day. A timely appeal was then made to the State Board of Education.

Appellant was charged with "having knowledge of and being present with a group of students at which time illegal drugs were used." During the hearing before the Local Board, there was testimony that Appellant, accompanied by another student, began driving her car to school on the morning of October 13, 1978. The car stopped running before they reached the school and they obtained a ride to the school campus.

When they arrived on the campus, Appellant and the other student joined a group of students by the bleachers. Appellant testified that she wanted to inform another student that they would have to find another way to reach the store where they both worked after school. Some of the students were smoking cigarettes and Appellant also smoked a cigarette.

Later in the day, the principal called Appellant to his office and asked her if she had been smoking a marijuana cigarette. Appellant denied she had and the principal and assistant principal then smelled Appellant's breath and were of the opinion she had been smoking a marijuana cigarette. Appellant was interrogated intermittently for the remainder of the day, but denied throughout that she had smoked a marijuana cigarette. The student

who rode with Appellant also testified that she did not see Appellant smoking a marijuana cigarette.

The school system did not present any evidence that Appellant either smoked a marijuana cigarette, or was willingly a part of any group where marijuana cigarettes were smoked. Appellant did testify that she was aware of marijuana usage in the school and would not report her fellow students if she did see them smoking marijuana.

PART III

CONCLUSIONS OF LAW

Appellant was charged with violating a Local Board policy which stated:

"General causes for long-term suspension are: conduct or behavior which seriously damages the good order and human relations of the school. . . ."

The conduct or behavior which allegedly violated this policy was having knowledge of and being present with a group of students at which time illegal drugs were used. Appellant has raised the issue that the Local Board policy is vague, ambiguous, and capricious so that it lends itself to a multitude of various and arbitrary interpretations and is, therefore, unconstitutional. It is the opinion of the Hearing Officer that it is unnecessary for the State Board of Education to make a determination of

the constitutionality of the policy because of the lack of evidence that exists to support the charge.

There was no evidence presented at the hearing to support the charge against Appellant. The principal and vice-principal testified they smelled marijuana on Appellant's breath, but there was no evidence that Appellant had been smoking marijuana or was present when others were smoking marijuana. None of the students involved was charged with smoking marijuana.

The principal and vice principal testified that during the interrogation process, Appellant stated there was marijuana present in the group she met before school started. There was not, however, any evidence that Appellant either encouraged or condoned the usage of marijuana by other students. Appellant testified that she would not report usage of marijuana by other students, but, without a specific finding that students are obligated to report the infractions of other students, this does not establish any conduct which seriously damages the good order and human relations of the school. The Hearing Officer, therefore, concludes that the evidence presented at the hearing did not establish that Appellant's conduct damaged either the good order or the human relations of the school.

Appellant has also raised the issue that the Local Board did not decide her case immediately after

hearing the evidence, or at least before hearing the evidence in some other cases. The Local Board counters by arguing that a decision does not have to be given before five days have elapsed after the hearing. It is, however, the Hearing Officer's opinion that Appellant has been denied fundamental due process rights when the Local Board hears other cases involving other witnesses concerning the same circumstances and charges as were involved in Appellant's case. The Local Board did not make any findings of fact concerning Appellant, so there is nothing to indicate whether the Local Board made its decision solely on the basis of the evidence presented at Appellant's hearing, or if the evidence presented at the other hearings had an influence on their decision.

Although there normally does not exist any requirement for a local board to make findings of fact, and a local board can normally decide a case anytime within five days after a hearing, the circumstances of this case resulted in a situation where Appellant could have been found against based on the testimony of witnesses she did not have an opportunity to confront or cross-examine. Without any specific findings by the Local Board, the State Board of Education is unable to determine the basis for the Local Board's decision. The Hearing Officer, therefore, is of the opinion that the Local Board erred by not making findings of fact and hearing other cases relating to the

same circumstances before a decision was made in Appellant's case.

The Local Board has argued that since Appellant has already completed her suspension from school, the issues involved in the appeal are moot and the appeal should be dismissed. The record, however, shows that Appellant was to receive certain student honors on the day she was originally suspended. The record does not indicate that Appellant has ever received her awards. A decision by the State Board of Education that Appellant was erroneously suspended will permit Appellant to be granted all awards and honors she was to have received but for the suspension. The Hearing Officer, therefore, concludes that the appeal is not moot.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record and briefs submitted, the Hearing Officer concludes that the evidence presented by the school system did not sustain the charges made against Appellant, that Appellant was denied fundamental due process because she was not permitted to confront and cross-examine witnesses, and that Appellant's appeal is not moot. The Hearing Officer, therefore, recommends

that the decision of the White County Board of Education
be reversed.

L. O. Buckland
L. O. BUCKLAND
Hearing Officer