

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANTONE R.,)
Appellant,)
v.) CASE NO. 1985-3
MUSCOGEE COUNTY BOARD OF EDUCATION)
Appellee.)

O R D E R

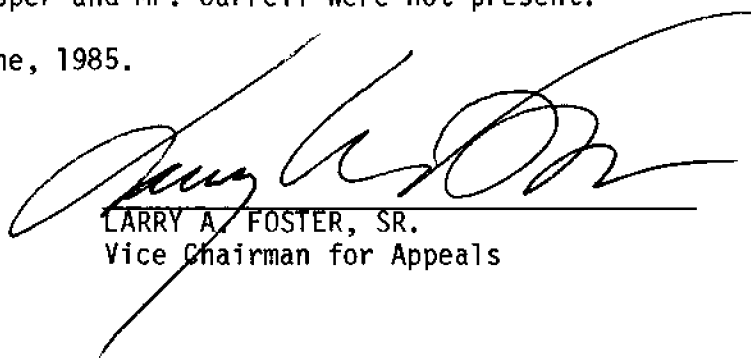
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Muscogee County Board of Education herein appealed from is hereby sustained.

Mr. Lathem, Mrs. Jasper and Mr. Carrell were not present.

This 13th day of June, 1985.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANTONE R.,)
)
 Appellant,)
)
 v.) CASE NO. 1985-3
)
 MUSCOGEE COUNTY BOARD OF)
 EDUCATION,)
) REPORT OF
 Appellee.) STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision of the Muscogee County Board of Education (hereinafter "Local Board") sustaining the actions of a disciplinary tribunal placing Antone R. (hereinafter "Student") in an alternative school for the remainder of the 1984-85 school year. The Student appeals contending the punishment he received was excessive and inappropriate, the Local Board violated its own behavior code, the Local Board was in violation of P.L. 94-142 and Section 504 of the Rehabilitation Act, the Local Board failed to provide transportation to the alternative school, and the Local Board failed to provide prior notice and a hearing for a suspension longer than three days. The Local Board contends that the record supports its actions and the Hearing Officer recommends the decision of the Local Board be sustained.

PART II
FACTUAL BACKGROUND

The Student in this case has had a history of discipline problems involving skipped classes and truancy. The matter which brought up the disciplinary action on which this appeal was based was a fight which occurred between the Student and another classmate in the school lunchroom. The Student admitted that at the time the fight broke out he was again skipping classes. There was evidence that at the time of the hearing he had missed 40 days of Algebra, 36 days of Physical Science, 25 days of English, 29 days of Social Studies, 30 days of R.O.T.C., and 30 days of homeroom. He admitted that he had often skipped classes but stated that the reason was because he had a physical problem with excessive gas in his stomach and intestines. He stated that the teachers would not let him use the restroom often enough. He never communicated his problem to the teachers, although he did discuss it with an assistant principal. The assistant principal stated he was told the problem was not that the Student was not allowed to use the rest room but that the Student did not have enough privacy in the restroom.

The Student's principal recommended that the Student appear before the Student Discipline Tribunal for violation of rule #5, physical abuse by a student to a person not employed by the school, #8, disregard of directions or commands, #9,

unexcused absences, #11, leaving school without permission, and #12, acts of misconduct. The Student Discipline Tribunal decided on February 6, 1985 that the Student should be placed in the alternative school for the remainder of the year.

The Student appealed the decision of the Student Disciplinary Tribunal to the Local Board on February 12, 1985 and the Local Board affirmed the decision on March 18, 1985. The Student appealed to the State Board of Education on April 15, 1985.

PART III

DISCUSSION

The State Board of Education is required to affirm the decision of the Local Board if there is any evidence to support that decision and there is no clear abuse of the Local Board's discretion. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. In the present case, the Local Board made the decision to assign the Student to its alternative school as opposed to the Local System's regular high school based upon the recommendation of the Student Disciplinary Tribunal. There was ample evidence in the record that the Student had been a disciplinary problem. He had skipped several classes, had been involved in the school lunchroom altercation, and had refused to cooperate with school officials on another occasion.

The Student contends the punishment was excessive and innappropriate. The Local Board is vested with the discretion to determine the necessary discipline for students who violate its rules. In the present case, there does not appear to be an abuse of that discretion and the Student has not cited any authority which would demonstrate that the actions of the Local Board constitute such an abuse of discretion. For this reason, this contention does not warrant reversal of the Local Board's decision.

The Student argues that the Local Board violated its own behavior code in relation to an incident in which the Student was removed from school grounds and questioned by police. There is insufficient evidence in the record from which any conclusion can be drawn that the Local Board in any way violated any of the Student's rights with respect to this incident. Additionally there were sufficient grounds for the disciplinary action imposed without reference to that incident in that the Student admitted he skipped classes.

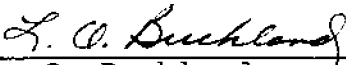
The Student also argues that his rights under P.L. 94-142 and Section 504 of the Rehabilitation Act were violated. He has, however, presented no evidence that he is in the category protected by those statutes; i.e., a handicapped student. The rights granted under those statutes provide ample protection if invoked. Whether the Student is entitled to the protection of those statutes should not be decided under this procedure, but under the procedures provided specifically for handicapped children.

The Student makes three further arguments, none of which warrant reversal of the Local Board. First, he argues the Local Board denied his basic human privileges because he was denied permission to use the rest room on occasion. The only evidence that he was ever denied that right was his own testimony. There was evidence he was allowed that right from time to time. Additionally, he skipped classes on occasions other than times when he claimed he was denied that right. Second, the Student argues that the Local Board did not provide transportation to the alternative school, thus denying him the right to an education. The Student did not provide any evidence that he was unable to arrange transportation to the alternative school or any authority that the Local Board is required to provide such transportation. Finally, he argues that the Local Board is required to provide students with formal hearings for suspensions longer than three days. At present, Georgia law provides that suspensions longer than ten days are deemed long term suspensions (O.C.G.A. § 20-2-751). The Hearing Officer is unaware of any requirement that a formal hearing be provided for suspensions of less than ten days and the Student has provided no authority to the contrary. Thus, none of these three arguments warrant reversal of the Local Board.

PART IV

CONCLUSION

Based upon the foregoing discussion, the record submitted, and the briefs of the parties, the Hearing Officer is of the opinion that there is evidence in the record to support the decision of the Local Board and that the Local Board did not abuse its discretion by assigning the Student to the alternative school. The Hearing Officer, therefore, recommends that the decision of the Local Board be SUSTAINED.



L. O. Buckland
State Hearing Officer