



STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT C.,	)	
	)	
Appellant,	)	CASE NO. 1985-7
	)	
v.	)	
	)	
MARION COUNTY BOARD	)	
OF EDUCATION,	)	
	)	REPORT OF STATE
Appellee.	)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Robert C. (hereinafter "Student") from a decision of the Marion County Board of Education (hereinafter "Local Board") to deny the Student credit for social studies and thus not allowing him to graduate, because he missed more days than allowed by Local Board policy. Appellant contends the policy which the Local Board acted under was vague, overbroad and irrational in violation of due process and that the Local Board abused its discretion in rendering its decision. The Local Board argues that it had no alternative but to follow its policy in the first instance and also that the Local Board had the discretion to not change the policy. The Hearing Officer recommends the decision of the Local Board be reversed.

## PART II

### FACTUAL BACKGROUND

The Local Board has a policy which provides:

#### Attendance

The school year is 180 days in length. A student enrolled in Tri-County High School who misses more than ten (10) days per semester in any class shall not receive credit for that class. For full term courses (eighth grade) a student will not receive credit when he/she misses twenty (20) days in any class.

A student with excessive absences may appeal the above regulation to the principal in writing within five school days on the basis of hardship, extenuating circumstances, or other extreme emergencies. The school administration reserves the right to request additional written documentation concerning excessive absences. This includes requiring a doctor's statement.

AT NO TIME WILL UNEXCUSED ABSENCES  
BE APPROVED.

The Student in this case had two full day excused absences, two afternoon absences to go to the dentist, and received an eight day suspension, which caused eight days of absences that were unexcused. Additionally, he was absent for a short period of time due to the death of his brother. In spite of these absences, the Student achieved satisfactory grades in enough courses to graduate. However, because the Student had exceeded the ten (10) day requirement, he was not given credit and was not allowed to graduate. In accordance with the policy, the

Student appealed the denial to the principal who denied the Student's appeal. He then appealed to the Local School Superintendent who likewise denied the request. Appellant then requested to be heard by the Local Board.

The Local Board met on May 28, 1985. All five board members were in attendance at the hearing as well as the school superintendent, school principal, and two assistant principals. At the hearing, testimony showed that but for the absences, he would have passed. At the hearing, there was much confusion as to whether the last sentence, which is emphasized in the policy, requires a failure any time a student has absences exceeding ten days and any of those absences is unexcused.

During the hearing, the Local Board members, the Local Superintendent, the Principal, and an assistant principal discussed how the policy should be applied. The Local Board members questioned the Local Superintendent, the Principal and the assistant principal. The Local Superintendent took the position that a student who had more than ten day of absences could obtain relief only if all of the absences were excused, but he admitted the policy was confusing. The Principal took a similar position. There was also testimony that the Student was permitted to have an excused absence because of the death of a brother, and that the administration did not count the day in determining whether the Student would receive credit.

The Local Board members questioned and discussed how the policy should be applied and advanced different approaches in

their questions. Under one approach, the excused absences would not be counted against the Student in determining whether he could be given credit. Under another, the Local Board could make the decision in any circumstances. The Local Superintendent and the principals, however, stated that the policy prevented any consideration if a student had any unexcused absences and more than ten absences. The Local Board then voted not to approve the request for consideration. A timely appeal from the decision was then made to the State Board of Education.

### PART III

#### DISCUSSION

It is clear from the record that the Local Board did not understand its own policy, i.e., the Local Board members questioned whether they had the power to act when an appeal was heard. Also, the policy as written does not lead to the interpretation given to it by the school administrators and the Board. If the Board simply had a policy that credit would be denied to a student who missed more than ten days, then that policy would have been within the Local Board's authority to enforce. See, Edward E. v. Effingham Cnty. Bd. of Ed., Case No. 1985-5. However, here, the Local Board policy provides that a student with excessive absences may appeal the above regulation to the principal on the basis of hardship, extenuating circumstances, or other extreme emergencies. The policy then further states that "at no time will unexcused absences be approved." The Student in this case had eight unexcused absences. The request was that he be allowed to receive

credit in spite of twelve absences, four of which were excused. Some of the Local Board members did not interpret the policy as automatically denying credit when a student had one unexcused absence and ten excused absences. From the wording of the policy, it would appear that the unexcused absences would not be approved but that excused absences could be. The Board members themselves stated that the policy is not clear, and the Local Superintendent agreed.

In Michele C. v. Clinch Cnty. Bd. of Ed., Case No. 1981-12, which also involved denial of grades for excessive absences, the decision of the Local Board was reversed because, although exceptions were granted, there was no policy concerning when the Local Board would grant exceptions and the application of the policy in that instance was considered to be arbitrary and capricious.

Michele C. is controlling in the present case. The Local Board policy failed to provide a clear rule to students or parents that one unexcused absence could cause ten excused absences to be counted against a student and result in failure. In their questions, the Local Board members did not construe the policy in that fashion, although their decision indicates they may have accepted that construction. Additionally, even though the school Principal stated that the policy meant one unexcused absence would prevent consideration of credit for excessive absences, he did not follow that reasoning himself. He stated that the Student was allowed to attend his brother's funeral in addition to the twelve absences and that did not count against him. Thus, he decided to excuse the Student from that day's absence, indicating to the parent that the missed day would not be considered an absence.

Under the interpretation taken of the Local Board Policy, a student with eleven excused absences would be given credit, but a student with ten excused absences and one unexcused absence would not be given credit. Although the stated reason for the policy was to keep the students in school, the State Hearing Officer is of the opinion that there has not been advanced any rational reason for a rule which would treat two such students differently. The State Hearing Officer is also of the opinion that the policy can be interpreted as permitting the Local Board to consider a student's circumstances even if a student has an unexcused absence in the total number of absences. In other words, the excused absences would be deducted from the total absences, and if the remainder exceeded ten, then, under the last sentence of the policy, a student could not receive consideration.

Because of the ambiguity of the policy and the lack of any reasons why the Student was denied credit, the State Hearing Officer is of the opinion that the Local Board's decision was arbitrary and capricious under the guidelines of Michele C. v. Clinch Cnty. Bd. of Ed., Case No. 1981-12.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing, the record submitted, and the briefs of counsel, the Hearing Officer is of the opinion that the Local Board policy is so vague it does not permit notice to students and parents and that the decision of the Local Board

unreasonably applied the policy such that the actions of the Local Board were arbitrary and capricious and, therefore, outside the scope of its authority. The Hearing Officer, therefore, recommends the decision of the Local Board be REVERSED.

*L. O. Buckland*

---

L. O. Buckland  
State Hearing Officer