

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CONCERNED CITIZENS AGAINST  
SCHOOL SITE, )

Appellant, )

v. )

CASE NO. 1985-8

COBB 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 appeal of the decision of the Cobb County Board of Education herein is hereby DISMISSED due to the fact that no hearing occurred before the Local Board in this case under the provisions of O.C.G.A. §20-2-1160 and, therefore, no appeal to the State Board of Education is authorized.

This 10th day of October, 1985.

Mr. Temples and Mr. Smith were not present.



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LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CONCERNED CITIZENS	)	
AGAINST SCHOOL SITE,	)	
	)	
Appellants,	)	CASE NO. 1985-8
	)	
v.	)	
	)	
COBB COUNTY BOARD	)	
OF EDUCATION,	)	
	)	
Appellee.	)	REPORT OF STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by the Concerned Citizens Against School Site (hereinafter "Citizens") from a decision of the Cobb County Board of Education (hereinafter "Local Board") affirming the selection of a high school site. The Citizens' appeal is based upon actual site concerns, alleged due process violations, and alleged violations of the open meetings law. The appeal requests that the decision of the Local Board approving the school site be reversed and that the State Board reverse its own approval of the school site. The Local Board contends that the decision was an administrative decision within the discretion of the Local Board, that the meeting was merely a public forum giving the Citizens an opportunity to speak, and that the other alleged violations are without merit. The State Hearing Officer recommends that the appeal be dismissed.

## PART II

### FACTUAL BACKGROUND

On May 6, 1985 the Local Board entered into a contract to purchase property on which to build a new high school. The contract called for a closing to be completed within thirty (30) days of that time. The site chosen for the new high school happens to be in the middle of the residential neighborhood in which the Citizens reside. Thus, the Citizens objected to the site and requested a hearing regarding the site prior to the date of the closing.<sup>1</sup>

The Local Board notified the Citizens, through their representative, orally on the evening of May 29, 1985, and in writing on May 30, 1985, that the Local Board would hold a hearing on May 30, 1985.<sup>2</sup>

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<sup>1</sup> The actual request for a hearing was not introduced into evidence at the hearing nor made a part of the record in this case, although it was attached to both Appellant's and the Local Board's brief on appeal. It was read into the record as follows: "Mr. Bill Bates, Chairman, Cobb County Board of Education. Dear Mr. Bates: We hereby demand a public hearing in the evening of your choice regarding the proposed Hembree Road High School site. We expect this hearing to take place prior to the closing of the property in question. We await your response." Signed, Concerned Citizens Against School Site, Tony Petrucelli, Chairman.

<sup>2</sup> This letter was also not introduced into evidence at the hearing nor made a part of the record on appeal, although it also is attached to both Appellant's and the Local Board's briefs on appeal. If this appeal is an appeal under O.C.G.A. §20-2-1160, this letter cannot be considered as evidence by the State Board of Education because it is not included in the record. However, statements in the record made about the letter or the purpose of the hearing may be considered.

The Local Board then held a special, called meeting the evening of May 30, 1985. At the opening of that meeting, the Chairman of the Local Board stated the purpose of the meeting as a public forum on the location of the school site. Subsequently, the Chairman turned the meeting over to the Local Board attorney to act as moderator for the forum and to explain the procedure to be followed. The Local Board attorney described the proceeding as a quasi-judicial proceeding, analogous to a judicial proceeding, in response to a request for a hearing to discuss the proposed school site. He further stated that the Local Board was holding the hearing to receive evidence relevant and material to the location of the school site, and was assembled as a school court to consider the construction and administration of school law. Guidelines were laid out allowing the School Administration fifteen to twenty minutes to support its selection of the proposed school site and giving the Citizens the remainder of an approximate two hour period to present evidence and to submit written questions to the Administration.

The Local Board's Administration presented its part, explaining the reasons they chose the local site over two other sites and by further endorsing their initial decision on the site. The Citizens were then given the opportunity to, under guidelines established, present their side of the issue.

The Citizens' representative argued that the designation of the meeting as a quasi-judicial hearing was objectionable based

upon the Citizens' desire for a public hearing. The representative then presented an expert in site planning, site engineering, and transportation engineering whose testimony was, in summary, that the topography of the site would cause a great expense but that it could be developed. Another citizen then testified as to dangerous traffic conditions and public opposition concerning the site. The Citizens' final speaker argued that the hearing was supposed to be a public forum instead of a quasi-judicial hearing and contended they did not bring legal representation for that reason. Subsequently, written questions were presented from the audience, read to the Administration by the Local Board attorney, and responded to by the Administration. Written follow up questions, but not oral follow up questions, were allowed. No legal objection to that procedure was registered even though it appeared the procedure was unacceptable as the Citizens wanted to ask questions directly. The Local Board went into executive session and subsequently returned and voted to accept the proposed site.

The Citizens filed this appeal June 7, 1985 and amended their appeal on June 29, 1985.

Appellants filed a Motion for Supersedeas on September 5, 1985 and the Local Board filed a Motion to Dismiss certain issues raised on appeal September 10, 1985.

### PART III

#### DISCUSSION

Appellants contend on appeal that the Local board failed to comply with various procedural requirements for a hearing, that the Local Board failed to meet State Board policy in selecting the site, and that the Local Board failed to comply with the legal requirement to hold open meetings. The procedural violations alleged are that the Local Board failed to give adequate notice as to the time and nature of the hearing, the Local Board failed to swear the witnesses, the Local Board denied the Citizens the right of cross-examination, the two hour time limit was unreasonable, and the Local Board's attorney acted in improper roles as judge, witness and advocate. The alleged violations of State Board policy are that the Local Board failed to follow requirements that the site selected be acceptable to the community, particularly from a traffic and safety standpoint, and that the site be professionally evaluated for physical development in order to save money on development costs. The alleged violation of the requirement to hold open meetings results from the Local Board's Executive Session at the end of the hearing.

The Local Board contends that the hearing held was a public forum for discussion, that the decision made was an administrative decision, that the alleged procedural and policy violations are not reversible error, and that the Local Board's Executive Session does not warrant reversal. The contention that the hearing was a public forum is based upon the request of the Citizens and

their actions at the hearing. The contention that the decision was an administrative decision rather than a quasi-judicial decision is based upon the argument that the power to select school sites lies with the Local Board and no hearing concerning site selection is required of the Local Board. Their contentions concerning the procedural violations are based upon the argument that no quasi-judicial hearing took place, and if it did, the alleged procedural violations were either not violations or were not objected to at the hearing and, thus, cannot be raised first on appeal. The Local Board contends that the Executive Session is authorized under the attorney client relationship and also that no objection was raised with regard to that issue at the hearing either, and thus, that issue cannot first be raised on appeal.

The hearing which was held on May 30, 1985 before the Local Board was held as a result of a request for a public hearing by the Citizens. The Citizens' request, as read into the record, did not state any legal issues that the Citizens intended to raise at the hearing. It merely said the hearing was requested "regarding the proposed Hembree Road school site." After counsel for the Local Board described the hearing as a quasi-judicial hearing, the Citizens argued that they did not request a quasi-judicial hearing and that, if they had known it was going to be a quasi-judicial hearing, they would have brought counsel with them.

While a request for a hearing under O.C.G.A. §20-2-1160 does not have to specifically refer to that code section, it is necessary that an issue be defined sufficiently so that the request can be understood to be requested under that code section and that the Local Board actually provide a hearing under that code section in response to the request. State Board policy requires that if a motion for reconsideration of a local board's decision is filed, it must set forth clearly and succinctly the reasons why the decision is complained to be erroneous, and if the hearing is based upon a notice by the Local Board making a motion for reconsideration unnecessary, that a written statement of the parties contentions, as specific as is required for a motion for reconsideration, must be filed at least two days prior to the hearing.

In the instant case, no such issues were raised or defined either before the hearing or at the hearing. On occasion, some procedural leeway has been afforded a pro se plaintiff by the courts. However, such leeway is not warranted in a case such as this where even at the hearing no legal issues were raised and the Citizens requested a public forum. A public forum is not the type of hearing contemplated by O.C.G.A. §20-2-1160. The Citizens merely made a good faith attempt to convince the Local Board to change the school site.

In addition to the fact that the Citizens did not request a quasi-judicial hearing, the actual hearing which was provided the Citizens by the Local Board was not a quasi-judicial hearing



held on a question or controversy involving school law, but rather was a public hearing regarding the selection of the school site. At the beginning of the meeting, the Chairman of the Local Board stated that the hearing was for the purpose of a public forum. The Local Board then allowed its attorney to set the procedure for the hearing. Even though the Local Board's attorney labeled the hearing as a quasi-judicial hearing, that label did not make the hearing a quasi-judicial hearing under O.C.G.A. §20-2-1160. The procedures set for the hearing by the Local Board attorney were, for the very reasons alleged by the Citizens on appeal, inconsistent with the procedure required for a quasi-judicial hearing. As is stated by the Citizens, the Local Board did not provide sufficient notice for a quasi-judicial hearing, it did not swear witnesses and it did not allow cross-examination. These types of procedures are the types of procedures which are generally associated with a quasi-judicial hearing and, additionally, these procedures are required by State Board Policy BCAEA.

If the hearing had been a quasi-judicial hearing as authorized under O.C.G.A. §20-2-1160, then the Local Board's decision could be subject to reversal for failure to follow required procedures. However, proper objections would have had to have been made at the hearing regarding the alleged improper procedures.

Because the hearing was not a quasi-judicial hearing, it is unnecessary to decide the effect of the Local Board's failure to follow the required procedures.

The Citizens did not get what they wanted from the Local Board, but they did get a public hearing. The Citizens made it clear that they desired an opportunity to question the Local Board members regarding the site selection. The Local Board, through the procedures it used, did not allow such questioning to occur. However, there is no requirement that the Local Board allow questioning of board members regarding site selection. Site selection is a matter that is clearly within the Local Board's discretion. In Colegrove v. Clarke Cnty. Bd. of Ed., Case No. 1982-11, it was stated that:

...a local board of education does not have to grant a hearing or permit citizen input when it is making a decision regarding the assignment of students to the different schools under its jurisdiction because it is acting in an administrative capacity rather than in a quasi-judicial capacity. Anderson v. McMurray, 217 Ga. 145 (1961); Mayor of East Point v. Jones, 88 Ga. App. 848 (1953); McNeil, et. al. v. Whitfield, Cnty. Bd. of Ed., Case No. 1980-16.

A local board decision regarding site selection is an administrative decision just as a decision regarding the assignment of students is an administrative decision. Thus, no quasi-judicial hearing was required to be granted and indeed none was granted.

Even though no quasi-judicial hearing was held in the present case that does not mean that such hearings cannot be held regarding school site selection. However, where such hearings

are held, proper procedures must be followed and the standard required to warrant a State Board reversal of a local board decision is extremely difficult for a citizens group to attain. The State Board of Education is not legally authorized to reverse the Local Board on an appeal under O.C.G.A. §20-2-1160 unless there is no evidence to support the decision of the Local Board or the Local Board's decision is shown to be a gross abuse of the Local Board's discretion. Boney v. County Bd. of Ed. of Telfair Cnty., 203 Ga. 152, 155 (1947).

Because no quasi-judicial hearing was provided by the Local Board, no appeal from the decision of the Local Board is authorized and the appeal must be dismissed. The State Board of Education is authorized under O.C.G.A. §20-2-1160 to hear appeals from decisions of local boards of education sitting as tribunals for hearing and determining any matter of local controversy in reference to the construction or administration of the school law. In order to give jurisdiction to the State Board of Education, the appeal must be from a decision of the local board sitting as a court, not from a mere action of the local board. Mallard v. Warren, 222 Ga. 731 (1966). Because the facts show that, in the instant case, the Local Board was not requested to sit as a court, and because the facts show that, in the instant case, the Local Board did not sit as a court, the State Board of Education is not authorized to hear this appeal under O.C.G.A. §20-2-1160.

This recommendation relates only to the State Board of Education's authority to hear appeals under O.C.G.A. §20-2-1160 and does not relate to the State Board of Education's administrative authority under other statutes such as O.C.G.A. §20-2-250. Issues relating to whether a local board has complied with State Board policy may be raised in hearings before local boards under O.C.G.A. §20-2-1160. However, because no hearing has been held under O.C.G.A. §20-2-1160, such issues have not been considered by the State Hearing Officer in making this recommendation.


Because of the foregoing discussion, Appellants' final contention that the Local Board failed to comply with the legal requirement to hold open meetings, Appellants' Motion for Supersedeas, and the Local Board's Motion to Dismiss certain issues raised on appeal are also not subject to review by the State Board of Education.

#### PART IV

#### CONCLUSION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that no hearing under O.C.G.A. §20-2-1160 occurred before the Local Board in this case, and therefore, no appeal to the State Board of Education under O.C.G.A. §20-2-1160 is authorized. The State Hearing Officer, therefore, recommends that the appeal be

DISMISSED.

  
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L. O. BUCKLAND  
STATE HEARING OFFICER