

STATE BOARD OF EDUCATION

STATE OF GEORGIA

AUGUSTO S. MEDINA,)
Appellant,)
v.) CASE NO. 1985-33
DEKALB COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

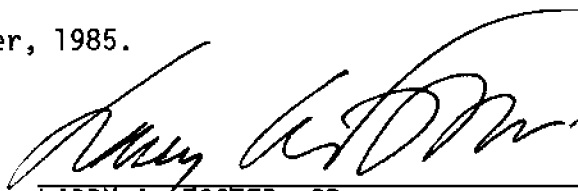
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 DeKalb County Board of Education herein appealed from is hereby REVERSED.

Mrs. Baranco abstained.

This 14th day of November, 1985.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

AUGUSTO S. MEDINA,)	
)	
Appellant,)	
)	CASE NO. 1985-33
v.)	
)	
DEKALB COUNTY)	
BOARD OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Augusto S. Medina (hereinafter "Appellant") from a decision of the DeKalb County Board of Education (hereinafter "Local Board") that Appellant's children could not attend the schools operated by the Local Board (hereinafter ("Local Board's schools") because Appellant was not domiciled in unincorporated DeKalb County. Appellant contends his house lies partly in unincorporated DeKalb County and partly within the City of Atlanta, but his domicile is in unincorporated DeKalb County. The State Hearing Officer recommends the decision of the Local Board be reversed.

PART II

FACTUAL BACKGROUND

During the 1984-85 school year, Appellant was notified by administrative personnel of the Local Board that his children would be withdrawn from the Local Board's schools because the Local Board believed him to be a resident of the City of Atlanta.

One of Appellant's children had attended the Local Board's schools for the past six years and his other child had attended the same school for the past three years.

Appellant was given until the end of the 1984-85 school year to find another school for his children. Appellant requested a hearing by letter dated May 20, 1985 and received a hearing on July 15, 1985 on the issue of whether he was a resident of unincorporated DeKalb County, thereby entitling him to send his children to the Local Board's schools. At the hearing, Appellant presented a survey which showed the City of Atlanta boundary line passed approximately through the center of his residence and a floor plan which would, when combined with the survey, show that his bedroom was in unincorporated DeKalb County. He further showed that the Local Board's street listing showed his residence to be included in unincorporated DeKalb County. The evidence showed that, in the past, he had voted in City of Atlanta elections, but has since changed his voting precinct and disavowed any future intentions to vote in City elections. Appellant's garbage is picked up by the City of Atlanta, and he pays school property taxes both to the City of Atlanta and unincorporated DeKalb County. In the past a child, who lived in the same house as Appellant now lives, had been forced to leave the Local Board's schools and attend schools in the City of Atlanta. Additionally, Appellant had, in the past, petitioned the City of Atlanta for permits to make improvements on the property. The Local Board found that the local government tax authorities considered the

improvements on the property to lie entirely within the City of Atlanta limits.

The Local Board in its Findings of Fact found that the evidence was not conclusive to establish Appellant's residence as being either in unincorporated DeKalb County or in the City of Atlanta. The Local Board then determined it would base its decision upon the official tax records and maps of DeKalb County. It cited as the reasons for that decision, first, that it is the official function of the tax authorities to make those kinds of decisions and they are better equipped to make such decisions than the Local Board and, second, that identifying residence for school purpose with residence for tax purpose will more fairly apportion the tax burdens and assets of neighboring jurisdictions. Appellant filed his appeal to the State Board of Education on August 8, 1985. Additionally, a request for supersedeas was filed which was granted on August 27, 1985.

PART III

DISCUSSION

Georgia law provides that admission to all public schools shall be gratuitous to all eligible children residing in the districts in which the schools are located. O.C.G.A. §20-2-671. Those children who have attained the age of six by December 31 and all youth who have not yet received a high school diploma or its equivalent are eligible for enrollment in the general education programs. O.C.G.A. §20-2-151.

Appellant contends on appeal that his children reside in unincorporated DeKalb County, are eligible children, and thus are entitled to attend the Local Board's schools. Appellant bases his position on the argument that while his house lies partly in unincorporated DeKalb County and partly in the City of Atlanta, his bedroom lies in unincorporated DeKalb County. He contends that his domicile is where he sleeps, which is in DeKalb County, and that his domicile becomes the residence of the children for the purposes of the laws providing his children admission to school in the district of their residence.

Appellant is correct that if his domicile is in unincorporated DeKalb County, his children are entitled to attend the Local Board's schools. For the purposes of O.C.G.A. §20-2-671 residence is equated with domicile and O.C.G.A. §19-2-4 provides that a minor child's domicile is that of the parents or custodial parent. Thus, the issue of whether his children are entitled to attend the Local Board's schools turns on whether Appellant is domiciled in unincorporated DeKalb County or in the City of Atlanta.

Under O.C.G.A. §20-2-1160, the Local Board held the hearing below to determine Appellant's domicile in order to resolve the question of whether his children were allowed to attend the Local Board's schools. At that hearing, Appellant introduced a survey and a house plan which showed that his bedroom was in DeKalb County. He further contended that the taxing authorities

were in error as to the actual location of his residence. Thus, Appellant introduced evidence which, without rebuttal, would establish his domicile in unincorporated DeKalb County.

As rebuttal to Appellant's position that his domicile is in unincorporated DeKalb County, the Local Board reviewed the county topographical map, the County tax map, and the County tax statement as evidence. Additionally, the Local Board attorney presented evidence that the tax records show Appellant's house to lie in the City of Atlanta.

The Local Board, after reviewing the evidence described above, made a finding that the evidence was not conclusive to establish Appellant's residence as being either in unincorporated DeKalb County or within the City of Atlanta or to evidence an intent by the Appellant to be considered a resident of one jurisdiction or the other. The Local Board then decided to base its decision on the tax records and maps, deferring to the County taxing authorities.

By deferring to the County taxing authorities, the Local Board did not comply with the requirement of O.C.G.A. §20-2-1160 that they should determine matters of local controversy. Under O.C.G.A. §20-2-1160, the Local Board:

shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction or administration of the school law, with power to summon witnesses and take testimony, if necessary, and when such local board has made a decision, it shall be binding on the parties. (Emphasis added.)

This section clearly places a burden on the Local Board to make a decision in cases such as this one. Here, the Local Board attempted to defer to the taxing authorities of the County. While the Local Board may use the taxing authorities' decisions as evidence from which to make its own decision, the Local Board clearly has an obligation under O.C.G.A. §20-2-1160 to make its own decision. The Local Board did not make its own decision in the present case but deferred to the County taxing authorities. Thus, the Local Board did not meet the requirements of O.C.G.A. §20-2-1160.

Even if the Local Board had complied with O.C.G.A. §20-2-1160, the Local Board precluded itself from finding Appellant was not domiciled in unincorporated DeKalb County. The State Board of Education is bound to affirm the decision of the Local Board if there is any evidence to support its decision. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. However, in the present case, the Local Board took the position that the evidence presented on its own behalf to rebut Appellant's evidence was inconclusive. The Local Board then proceeded to rely on that evidence to make its decision. The Local Board was faced with evidence which, if unrebutted, would create a presumption that Appellant resided in unincorporated DeKalb County. By deciding that the evidence presented was inconclusive to establish Appellant's domicile, the Local Board made a finding that the evidence presented did not rebut the presumption created that Appellant

was a resident of unincorporated DeKalb County. Thus, there was no evidence to support the decision of the Local Board that Appellant was not domiciled in unincorporated DeKalb County.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion there was no evidence to support the decision of the Local Board and that the Local Board did not make its own decision but deferred to the decisions of the County taxing authorities. Thus, the Hearing Officer recommends the decision of the Local Board be

REVERSED.



L. O. BUCKLAND
STATE HEARING OFFICER