STATE BOARD OF EDUCATION

STATE OF GEORGIA

ERIN N.,	)	
Appellant,	)	
v.	)	CASE NO. 1985-36
BARTOW 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, 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 Bartow County Board of Education herein appealed from is hereby sustained.

Mr. Temples was not present. Mr. Smith did not participate or vote.

This 9th day of January, 1986.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

Concurring opinion is attached.

Concurring Opinion

I agree with the majority decision only because I believe inter-district school transfers are a matter of local policy which should not be interferred with by the State Board of Education. The control and management of the local schools is vested in the local board of education. In this instance, however, I believe the local board acted improperly in establishing a policy, which the parents followed, and then reversing the decision of the school administrators that the policy permitted a transfer under the circumstances. The local board should have either initially established a policy which could be objectively met or permitted the transfer and changed the policy to reflect objective standards.

LARRY A. FOSTER, SR.

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ERIN N.,	)	
	)	
Appellant,	)	CASE NO. 1985-36
	)	
v.	)	
	)	
BARTOW COUNTY BOARD OF EDUCATION	)	
	)	RECOMMENDATION OF
Appellee.	)	STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by the parents of Erin N. (hereinafter "Student") from a decision of the Bartow County Board of Education (hereinafter "Local Board") reversing a decision by the Local Board's Administration that the Student would be granted an exception to attend a school out of her school district. The parents contend that there is no evidence to support the Local Board's decision that the Student did not qualify for a hardship exception, and that that decision was arbitrary and capricious. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

The Student is a five-year old female who lives in the attendance zone served by the elementary school in White, Georgia. The Student has an older sister who, although residing in the

same household, is allowed to attend Cloverleaf Elementary School even though she resides outside of the Cloverleaf Elementary School attendance zone. The Student's older sister is allowed to attend Cloverleaf Elementary School under a policy which authorized students to continue at the same school they were attending if attendance zones were changed.

The parents wrote to the Bartow County School Superintendent (hereinafter "Superintendent") on July 19, 1985, requesting that the Student be allowed to attend Cloverleaf Elementary School. This request was based upon the quality of Cloverleaf Elementary School and the fact that her older sister attended that school.

The Superintendent responded to the parents' request by sending them application forms for students attending out-of-district schools in Bartow County. These forms provided that parents may request a change in school assignment for medical or psychological hardship reasons, and required medical documentation of such hardship. The forms were developed by the Local Board's administration to implement Local Board Policy JBCCA which provides that no exception to the assignment of students in schools will be made "except for documented medical or psychological hardship reasons."

The Student's mother wrote on the form that the reason for the requested change of school assignment was that the Student's older sister already attended Cloverleaf Elementary School. She

took the form to the family's regular pediatrician who signed it. Additionally, the pediatrician wrote a letter stating that the Student was "a very shy child who still finds security in inanimate objects," and that the Student "needs the emotional support of her older sister at this time in order to help her deal with this new situation." The request form and letter was then submitted to the Superintendent.

The parents' request was referred to an assistant superintendent and approved based upon the documentation submitted. The Student then entered Cloverleaf Elementary School to begin the 1985-86 school year.

On September 16, 1985, the Local Board held a called meeting and rescinded the administrative decision to allow the Student to attend Cloverleaf Elementary School. The parents requested a hearing concerning this decision and the Local Board held the hearing below on September 19, 1985 and determined that "no sufficient showing of medical or psychological hardship as required by School Board Policy has been shown which would authorize the transfer of the [Student] from his [sic] true school district."

The Student filed this appeal September 25, 1985 and moved the Chairman of the State Board of Education that the appeal serve as supercedeas to stay the decision of the Local Board until the final decision of the State Board of Education or until the appeal is dismissed. The request for supercedeas was granted September 27, 1985.

PART III

DISCUSSION

The Student first contends on appeal that the decision of the Local Board is not supported by the evidence. She contends that the Local Board failed to determine that a medical or psychological hardship does not exist or that the medical or psychological hardship was minimal, but only found that the medical or psychological hardship was not sufficiently shown. Based upon that determination, the Student contends that the letter from the doctor and the approval from the assistant superintendent were enough evidence in light of the fact that the Local Board did not state why the evidence shown was insufficient.

The Student's argument, that there was no evidence to support the decision of the Local Board, fails to consider that the burden of proving that the Student met the hardship exception to the policy was on the Student. The Local Board did not have to prove that the hardship did not exist. The policy was written by the Local Board and, under O.C.G.A. §20-2-1160, is to be interpreted by the Local Board. Under the policy, it is the Student's burden to demonstrate a medical or psychological hardship. That demonstration is required to be made to the Local Board in the final decision, although the Local Board might allow the administration to make such decisions as a preliminary matter subject to the Local Board's reversal. Based upon the evidence presented, the Local Board determined that the parents did not meet their burden

of proof. Such a determination is within the Local Board's discretion, provided it is not arbitrary and capricious, as discussed below.

The Student's second contention on appeal is that the decision of the Local Board is arbitrary and capricious. She contends that the Local Board policy provides that students may attend out-of-district schools whenever there are documented medical or psychological hardship reasons to do so and that the Local Board has, in this instance, departed from that policy without any reason.

Two previous decisions of the State Board of Education have reversed decisions of local boards of education because they were considered arbitrary and capricious. Both of those cases concerned denial of credit for coursework due to excessive absences. In Michele C. v. Clinch Cnty. Bd. of Ed., Case No. 1981-12, the local board had a policy that "any student who misses more than eight days during one quarter shall fail for that quarter." However, in spite of that policy, the local board had a policy which authorized exceptions to be made to that rule if the absences were excused. The student in Michele C. had ten excused absences and three unexcused absences (including two dental appointments which were not excused under the policy) and was denied credit based upon the policy. The local board had an attendance appeals committee which could provide that the student be given credit, and if that committee did not agree to give the student credit, the student could appeal to the local board. The attendance

committee and the local board denied Michele C. credit without stating any reason. In that case, the local board failed to establish guidelines, which resulted in a situation where students with excused absences could be failed and students with unexcused absences could be passed. In Robert C. v. Marion Cnty. Bd. of Ed., 1985-7, a situation similar to that in Michele C. arose, except that the policy additionally provided that at no time would unexcused absences be approved. The administration read the provision to mean that one unexcused absence meant no exception could be granted, although the administration admitted that it could be read to mean that absences other than unexcused absences would be approved. The local board members discussed the policy and did not agree among themselves upon the meaning of the policy. They finally decided not to grant the student credit even though they failed to agree on what the policy meant. The State Board reversed both Michele C. and Robert C.. In each of those cases, the purpose of the policy was to encourage student attendance and to benefit the student's education through being present during classes in which instruction is provided. However, the application of the policies was arbitrary and was not related to that purpose because a student could be excused for sickness, failed for one day of unexcused absence, or failed for sickness, without any knowledge of how the standard was applied.

The instant case is distinguishable from both Michele C. and Robert C. in that, here, the Local Board provided an exception to

the policy which, although not exact, allowed for a reasonable exercise of discretion on its part. Local boards are not required to define their policies with the precision of a criminal code. Here, the policy is not confusing, although certainly individuals can disagree about the amount of evidence necessary to establish a medical or psychological hardship. The parents were aware of the requirement to document a medical or psychological hardship and had the opportunity to provide evidence in addition to that which was presented to the Local Board. From the evidence presented, the Local Board could determine that the statements made by the doctor were not conclusive, i.e., many five year old children find security in inanimate objects and need (desire) the security of the presence of older siblings. Thus, it is reasonable for the Local Board to have determined that no hardship was demonstrated because many children face the same types of feelings. The Hearing Officer, therefore, concludes that the decision of the Local Board was rational and was not arbitrary and capricious.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the decision of the Local Board is supported by the evidence and is not arbitrary and capricious. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER