

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JACOB B.,)
Appellant,)
v.) CASE NO. 1985-37
BARTOW COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

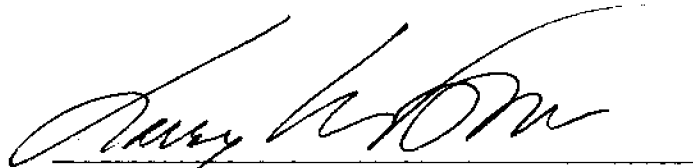
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 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.

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JACOB B.,)	
)	
Appellant,)	CASE NO. 1985-37
)	
v.)	
)	
BARTOW COUNTY BOARD OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by Jacob B. (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 his school district. The Student contends that there is no evidence to support the decision of the Local Board 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 six-year old male who lives in the attendance zone served by the Mission Road Elementary School. The Student has an older brother who, although residing in the

same household, is allowed to attend Cloverleaf Elementary School even though he resides outside of the Cloverleaf Elementary School attendance zone. The Student's brother is a sixth grade student who will be changing schools at the end of the school year.

The parents wrote to the Bartow County School Superintendent (hereinafter "Superintendent") on June 26, 1985, requesting that the Student be allowed to attend Cloverleaf Elementary School. This request was based upon the fact that the Student's older brother 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 parents talked with the Assistant Superintendent of the Local System because they were unaware of a psychologist to consult concerning their request and the Assistant Superintendent authorized them to see a school psychologist. The school

psychologist talked with the Student and his mother for fifteen minutes to a half hour. After they left, the school psychologist filled out the form stating that "Jacob has an older brother (Jason) who has become somewhat of a mentor to Jacob. He has become very dependent upon Jason ... the relationship will probably ward off future problems ... This six year old child is looking forward to being with his brother at school. At his young age to do otherwise may lead to a severe setback which may not be in the best interest of the Student. I recommend this child be allowed to attend out of district."

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 true school district."

The Student filed this appeal on 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 facts in this case differ only slightly from the facts in the just-decided case of Erin N. v. Bartow Cnty. Bd. of Ed., Case No. 1985-36. The only significant differences are that in Erin the Student's pediatrician wrote a letter stating 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," while in the present case, the school psychologist wrote on the required form that the Student was dependent upon his older brother, the relationship would probably ward off future problems, and that at his young age not allowing him to attend with his older brother may lead to a severe setback which may not be in the best interest of the Student. Essentially, both cases involve the desire of the parents and the students to attend school at the same school their older siblings attend. Because both cases involve such similar factual details, the reasoning of the Hearing Officer in Erin, recommending the decision of the Local Board be sustained, applies equally to the instant case. A copy of that recommendation is attached to this recommendation.

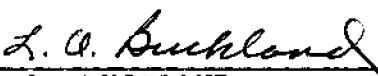
In the instant case, the fact that the parents relied upon the Local System's psychologist, who would be considered to be independent with respect to the parents, presents circumstances which make the Local Board's policy suspect. The policy, however, requires a demonstrated hardship in order to permit out-of-zone attendance. The Local Board has taken a consistent position that the possibility of feelings of insecurity by entering first graders with older siblings is insufficient evidence of a demonstrated hardship. The Local Board's application of the policy also does not result in the denial of any expectations on the part of the parents, i.e., the norm is in-zone attendance and out-of-zone attendance is an unanticipated exception. In the absence of any showing that the Local Board has inconsistently applied a standard, the Hearing Officer concludes that there has not been an abuse of discretion.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the recommendation in Erin N., 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

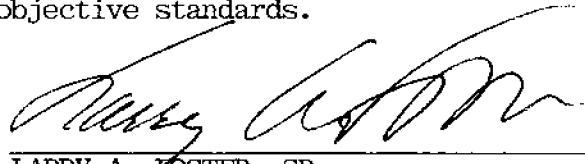
SUSTAINED.



L. O. BUCKLAND
STATE HEARING OFFICER

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 interfered 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.