STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHANNON P.,	)	
Appellant,	)	
v.	)	CASE NO. 1985-38
HOUSTON COUNTY BOARD OF EDUCATION	)	
Appellee.	)	

O R D E R

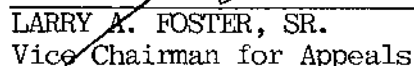
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, copy of which is attached hereto, and after a vote in open meeting,

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 Houston County Board of Education herein appealed from is hereby sustained because of the failure to follow procedures. On the merits, the State Board of Education is of the opinion that the residence of the parent is not controlling in deciding where the student attends school if there is a guardianship involved.

Mr. Temples was not present.

This 9th day of January, 1986.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHANNON P., Appellant,	)	CASE NO. 1985-38
v.	)	
HOUSTON COUNTY BOARD OF EDUCATION, Appellee.	)	RECOMMENDATION OF STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by the father (hereinafter "Appellant") of Shannon P. (hereinafter "Student") from a decision of the Houston County Board of Education (hereinafter "Local Board") that the Student could no longer attend Warner Robins Jr. High School but, instead, must attend school at Perry High School, the school which is in the attendance zone of Appellant's residence. Appellant contends on appeal that the decision of the Local Board is in error because his residence is in the Warner Robins Jr. High School District. The Local Board contends the appeal should be dismissed because it was not filed with the Houston County Superintendent nor was it filed within thirty days of the decision of the Local Board. The Hearing Officer recommends the appeal be dismissed.

PART II

BACKGROUND

Sometime prior to September 10, 1985, Appellant received a phone call from a school system official who informed him that the Student would have to be withdrawn from Warner Robins Jr. High School. Appellant appeared before the Local Board on September 10, 1985 to request that the Student be allowed to remain at Warner Robins Jr. High School. At that meeting, Appellant explained that his parents had kept his two daughters while they attended the Local Board's schools since 1967 and that now, with his parents' health failing, his parents needed his children to help them on a daily basis. He explained that he maintained two residences, one where his parents lived (hereinafter grandparents' house) and one on Houston Lake Road (hereinafter "Houston home"). Although he maintained he spent better than fifty percent (50%) of his time at his parents' home, he admitted that he voted in the district in which the Houston home is located and claimed his homestead exemption there.

At the end of his presentation, the Local Board voted to deny Appellant's request that the Student be allowed to attend Warner Robins Jr. High School and decided that she must attend school in the attendance zone of the Houston home.

On October 10, 1985, the State Department of Education received a letter from Appellant requesting an appeal of the Local Board's decision. The State Department of Education forwarded the appeal letter to the Local Superintendent who had not received a copy of the appeal. The Local Superintendent did not

receive the copy of the appeal letter until after the thirty (30) day time period for appeal had expired.

PART III

DISCUSSION

The Local Board contends that the appeal should be dismissed for failure to follow the statutory prerequisite of an appeal. It is the Local Board's contention that failure to file the request for appeal with the Local Superintendent within thirty (30) days of the hearing before the Local Board is fatal. The same issue has been decided by the State Board of Education in Martha P. v. Tift. Co. Bd. of Ed., Case No. 1984-17, a copy of which is attached to this recommendation. Appellant maintains that he was not informed of the appeal procedures and time limits and, therefore, he should not be penalized for submitting the appeal to the State Superintendent rather than the Local Superintendent. There is, however, no requirement to inform Appellant of the procedures which are set forth in the statute. There is nothing to distinguish the instant case from Martha P., and it should, therefore, be dismissed. The process of appeal which Appellant is trying to invoke is a legal process and Appellant is bound to meet the legal requirements in order to pursue the appeal.

Even if the appeal were not dismissed, the State Board of Education would be legally bound to affirm the decision of the Local Board. Appellant has attempted to bring into evidence on appeal facts and issues which were not raised in the hearing

before the Local Board. For example, Appellant has attached letters concerning the health of his parents, copies of legal guardianship papers and stated facts regarding other school systems. Because Appellant is not represented by counsel, it is understandable that such evidence and arguments are made. However, it is clear that the State Board of Education is not authorized to consider any evidence or issues which were not presented or raised before the Local Board at the September 10, 1985 hearing. See, Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Boney v. County Bd. of Ed., 203 Ga. 152 (1947). The evidence presented at the hearing authorized the Local Board to determine that Appellant resided at the Houston home rather than the grandparents' home. Appellant testified that he voted in the district in which the Houston home was located and that his homestead exemption was on that home. Thus, there was evidence from which the Local Board could determine Appellant resided at the Houston home.

The State Board of Education is bound to affirm the decision of the Local Board if there is any evidence to support its decision, absent an abuse of discretion on the part of the Local Board. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. In the present case there was evidence to support the decision of the Local Board and there was no showing by Appellant of any abuse of discretion by the Local Board.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of Appellant and Local Board counsel, the Hearing Officer is of the opinion that Appellant failed to properly appeal the Local Board's decision and that the appeal should be dismissed. If the appeal is not dismissed, the Hearing Officer is of the opinion there was evidence to support the decision of the Local Board and that decision should be sustained. The Hearing Officer, therefore, recommends the appeal be

DISMISSED.

L. O. Buckland

L. O. BUCKLAND
State Hearing Officer

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARTHA P., a/n/f of C.L.P., a minor student, Appellant,	
	CASE NO. 1984-17
v.	
TIFT COUNTY BOARD OF EDUCATION, Appellee.	REPORT OF STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision of the Tift County Board of Education (hereinafter "Local Board") to expel C.L.P. (hereinafter "Student") for the remainder of the 1984-85 school year for striking the principal at each of two schools she attended. The Student's mother represented the Student on appeal and contends that the actions of the Student were the fault of a teacher who did not believe what the Student told the teacher, and that the expulsion was too harsh a punishment. The Local Board contends the appeal should be dismissed as improperly filed and that it had no choice but to expel the student because other attempted discipline had failed. The Hearing Officer recommends that the appeal be dismissed as improperly filed.

PART II

FACTUAL BACKGROUND

The Student was a fourth grade student at Northside Elementary School when she was involved in an incident which resulted in her striking the principal. The principal sent the Student home and recommended the Student be placed in the off-campus center pending professional counseling. The Student's mother refused to have the Student placed in the offcampus center and refused the recommendation for professional counseling of the Student. The Student was then placed in a fourth grade class at Annie Bell Clark Elementary School. At that school, she refused to enter the classroom she was assigned to and also refused the principal's order to go into another room. When she refused, the principal put his hand on her and she slapped him and began to fight him. Appellant alleges that the reason the Student was obstinate was because she had a phobia about entering the room as she had seen two students in the room previously get sick. The principal filed a complaint as required under O.C.G.A. § 20-2-753(b) and a hearing was held by a disciplinary hearing officer appointed by the Local Board. The Disciplinary Hearing Officer recommended the Student be expelled for the remainder of the 1984-85 school year in a decision issued October 29, 1984. The parent appealed that decision to the Local Board. The Local Board heard the appeal November 13, 1984 and issued a decision sustaining the Disciplinary Hearing Officer's decision to expel the Student

on November 15, 1984. The Student's mother sent a letter to the State Department of Education requesting an appeal November 17, 1984. The State Department of Education notified the Local School Superintendent of the appeal request by letter dated November 27, 1984, and received the record by cover letter dated December 5, 1984.

The Local Board moved to dismiss the appeal based on Appellant's failure to abide by the proper procedure under O.C.G.A. § 20-2-1160(b) because the Appellant failed to file the appeal with the Local Superintendent.

PART III

DISCUSSION

O.C.G.A. § 20-2-1160(b) provides:

> Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the state board. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

While the language of the statute is that the appeal shall be filed with the superintendent, and does not specify whether it should be filed with the local or state superintendent, it is clear that it is intended that the filing be with the local superintendent. The requirement that it be filed with the superintendent comes immediately after the sentence which requires that the party filing the appeal also file a transcript certified as true and correct by the local school superintendent. The State Superintendent is not mentioned until subsection (c) of the statute concerning appeals to Superior Court from decisions of the State Board of Education. Also, the statute makes it the duty of the superintendent to transmit, within ten days after the filing of the appeal, a copy of the appeal together with the transcript of the evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the State Board. It is clear that only the local superintendent would have access to these documents at that point in the proceedings. Thus, the Hearing Officer is of the opinion that the statute requires an appeal to the State Board to be filed with the local superintendent.

A similar case has occurred in which a teacher who was dismissed from her position by a local board of education filed an appeal from a decision of the State Board of Education in Superior Court rather than filing the notice of appeal with the State Superintendent. Cooper v. Gwinnett Co. Bd. of Ed., 57 Ga. App. 289 (1981). In that case, the Georgia Court

of Appeals affirmed the decision of the Superior Court to dismiss the appeal because of failure of the Appellant to first file an appeal with the State Board of Education. Though the result may seem harsh, it appears clear that the instant case should be treated in the same manner. The appeal should be dismissed for failure to comply with the statutory prerequisites to filing the appeal.

In the event that the appeal is not dismissed, the decision of the Local Board to expel the Student is supported by evidence of misconduct on the part of the Student in that two principals testified the Student struck them. This was not denied by the Student. While expulsion is a harsh punishment, it is clearly a matter within the discretion of the Local Board and cannot be overturned on appeal absent a finding that the Local Board has abused its discretion. No precedent has been cited for showing that expulsion of a fourth grader is an abuse of discretion and the decision of the Local Board must stand.

PART IV

CONCLUSION

Based upon the record presented and the foregoing discussion, the Hearing Officer is of the opinion that the appeal was improperly filed and therefore the appeal should be dismissed and that even if the appeal were not dismissed, there is evidence in the record to support the decision of the Local

Board and no evidence was presented showing the Local Board abused its discretion. The Hearing Officer, therefore, recommends that the decision of the Local Board be

AFFIRMED.

L. O. Buckland

L. O. BUCKLAND
State Hearing Officer