STATE BOARD OF EDUCATION

STATE OF GEORGIA

James Litchfield, George Wilson
Christine Winoker,)

Appellants,)

v.) CASE NO. 1985-40

GWINNETT 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 regarding the merits 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 Gwinnett County Board of Education herein appealed from is hereby sustained.

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

JAMES LITCHFIELD GEORGE WILSON and CHRISTINE WINOKER, Appellants, v. GWINNETT COUNTY BOARD OF EDUCATION, Appellee.	)	CASE NO. 1985-40 RECOMMENDATION OF STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by James Litchfield, George Wilson and Christine Winoker (hereinafter "Appellants") from a decision of the Gwinnett County Board of Education (hereinafter "Local Board") removing the book Deenie, by Judy Blume, from the Gwinnett County elementary schools. Appellants desire the decision of the Local Board be reversed or, in the alternative, the case be remanded to the Local Board for reconsideration. Appellants contend that the Local Board took no evidence, that the burden of proof was not met by those who wanted the book out of the library, and that the Local Board's decision was arbitrary, capricious, and an abuse of discretion. The Local Board contends that the Appellants have no standing to appeal the Local Board's decision and that, even if they did, the decision of the Local Board was supported by the evidence, no procedural objections were raised

below and, therefore, none can be raised on appeal, that the issue of removing a book from elementary school libraries is not a question or controversy involving school law, and that the State Board lacks the power to remand the decision to the Local Board. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

BACKGROUND

The Local Board has adopted a policy regarding the instructional materials used in the system. The policy provides a procedure and forms for objecting to materials which are in the library. On May 21, 1985, Teresa E. Wilson filed a complaint regarding the book Deenie, written by Judy Blume, which was in the library at her daughter's school. Mrs. Wilson's complaint was that the book contained language which was inappropriate due to its sexual nature. She requested the book be withdrawn from all students.

Pursuant to the policy, the local school media committee met to hear Mrs. Wilson's complaint. After listening to her objections, the school media committee voted to remove the book from the elementary school where Mrs. Wilson's daughter attended. Mrs. Wilson appealed that decision on June 19, 1985, and was joined by two other parents, Debbie Gower and Diane Irizarry. They requested that Deenie be removed from all Gwinnett schools. Consistent with the policy, a Local System media committee met to consider the appeal. After hearing the statements of these

three parents and others, both for and against the book, and considering professional recommendations, the system media committee decided not to take any removal action. Mrs. Wilson, Mrs. Gower and Mrs. Irizarry then appealed that decision to the Local Board.

The Local Board voted in open session at its regular meeting on August 20, 1985, to hear the matter at a specially called meeting to be held on August 27, 1985. Mrs. Wilson, Mrs. Gower and Mrs. Irizarry were notified of the hearing by letter. A local newspaper in Gwinnett County published an article which, in explaining the actions taken at the August 20, 1985 board meeting, stated that the Local Board agreed to hear a decision by the school media committee to keep Deenie on the library shelves after objections had been raised concerning sexual topics in the book. Additionally, a notice was posted on August 26, 1985, that a hearing would be held concerning Deenie and a recorded telephone message that a hearing would be held on August 27, 1985 regarding Deenie played at least the evening before the hearing.

At the hearing, the Superintendent explained that each of the Local Board members had read the book in its entirety and would consider the objectionable language in light of the age and sophistication of the students, the closeness of the relationship between the specific techniques used and some concededly valid educational value, and the content and the manner of presentation. Citizens were then given the opportunity to speak

for and against the book. At the end of the hearing, the members of the Local Board voted to eliminate the book from the system's elementary schools.

On September 25, 1985, Appellants filed a motion for reconsideration and a notice of appeal to the State Board of Education. The notice of appeal was filed with the intention of protecting Appellants' rights to appeal in the event the motion for reconsideration was denied by the Local Board. The Local Board declined to reconsider the matter and processed the appeal as required by O.C.G.A. §20-2-1160. Appellants had not attended the August 27, 1985, hearing. In addition, Appellant Winoker does not have any children in elementary school.

PART III

DISCUSSION

Appellants are not aggrieved parties within the meaning of O.C.G.A. §20-2-1160 and, thus, have no standing to appeal the decision of the Local Board. O.C.G.A. §20-2-1160 authorizes "any party aggrieved by a decision of the local board rendered on a contested issue after a hearing" to appeal therefrom to the State Board of Education. It also states in similar language that "any party aggrieved by a decision of the State Board of Education may appeal from the State Board of Education's decision to superior court." While the word "party" is not further defined in the statute, it is generally understood that a party is one by or against whom a suit is brought. None of the named appellants

in this action brought the action below, nor was the action brought against them. Additionally, none of them was in attendance at the hearing. As the Local Board notes in its brief, if Appellants have standing to appeal under the language of O.C.G.A. §20-2-1160, then any citizen of Gwinnett County would similarly be able to argue they had standing to appeal the decision of the State Board of Education to the Superior Court, whether or not they were involved in the hearing before the Local Board or the appeal to the State Board of Education. Also, in any instance where a local board of education made a decision under O.C.G.A. §20-2-1160 which impacted upon the citizens of the county, the right to appeal could be held in the hands of whomever first appealed rather than the parties who took the initiative to seek the Local Board hearing in the first place. The Hearing Officer does not believe the statute intended such results.

Appellants contend that, if they are not entitled to appeal the initial decision of the Local Board, they should be entitled to have the State Board of Education remand the case to the Local Board for failure of the Local Board to grant Appellant's Motion for Reconsideration. Appellants argue that they had no notice of the hearing before the Local Board and that the State Board appeals policy expressly provides for reconsideration by the Local Board when citizens are not present at the meeting in which a decision is made about which the citizens complain.

However, the facts of this case do not warrant a finding that the Local Board was required to reconsider its decision.

The facts show that the Local Board provided a legally sufficient notice of its hearing and that, further, the hearing was even noted in the local newspaper. To require more would possibly mean that each citizen would have to be specifically notified. The Local Board is not required to go to such extremes. The notice provided was reasonable under the circumstances. Additionally, the hearing below was not a hearing of the nature considered by the State Board of Education in policy BCAEA for reconsideration. That policy intends to authorize reconsideration in instances where citizens have not had the opportunity to contest an issue before the Local Board. In the present case, the Local Board provided citizens the opportunity to argue for and against the book. Thus, a full opportunity was afforded Gwinnett citizens with respect to the issue and it need not be reconsidered by the Local Board.

Even if Appellants had standing to appeal, the decision of the Local Board should be sustained on the merits. Appellants' first contention on appeal with respect to the merits of the decision is that there was no evidence to support the decision of the Local Board. This argument is based on their contention that the State Board regulations on the conduct of a hearing were not followed in that witnesses were not sworn and subject to cross-examination, a written statement of contentions was not filed two days prior to the hearing, and no evidence was formally received by the Local Board.

The failure of the Local Board to follow the procedures set out in State Board Policy BCAEA does not, under the facts of this case, warrant reversal. Appellant is incorrect in stating that a written statement of contentions was not filed two days prior to the hearing. The petitioners in the hearing below filled out the required forms to contest the use of the book and even went so far as to list the pages which had, in their opinion, objectionable language. The fact that no witnesses were sworn and subjected to cross-examination is not reversible error because no one at the hearing objected to the procedure used and because the statements received were more in the nature of argument than evidence. Evidence was presented in that the book itself was read by all Local Board members. The Local Board stated at the outset that they had read the book and no one objected to proceeding on that basis. Local board hearings are not required to be held with all the formality of a trial in the courts of this state or nation. Previously, the State Board has addressed the issue of failure to follow the formal procedures set out in State Board Policy BCAEA. See, Concerned Citizens Against School Site v. Cobb Cnty. Bd. of Ed., Case No. 1985-8. While it was noted in that decision that failure to follow those procedures could subject a Local Board decision to reversal, it was also stated that "proper objections would have had to have been made at the hearing regarding the alleged improper procedures." This is consistent with the requirement that only issues

raised and decided at hearings before local boards may be raised on appeal before the State Board of Education under O.C.G.A. §20-2-1160. 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). Thus, Appellants' first contention does not warrant reversal of the decision of the Local Board.

Appellants' second contention with regard to the merits of the decision is that the Local Board failed to consider its own criteria with regard to objections to library media in making its decision. Appellant argues that the Local Board established criteria to be used in addressing complaints about books and the media committee used the Local Board's criteria. Under those criteria, the media committee considered the book proper for elementary school students. Appellants further argue that none of the witnesses discussed the book in relation to the Local Board's criteria and, thus, the petitioners failed to carry their burden of proof before the Local Board and the Local Board ignored its own criteria, which made its decision unfounded in fact, arbitrary and capricious, and an abuse of its discretion.

Appellants' second contention also does not demonstrate that reversal of the Local Board's decision is warranted. It is true that the Local Board established criteria to be considered in deciding complaints raised about library books and that the media committee considered these criteria in making its decision. However, the Local Board is not required to follow the decision

of the media committee. The Local Board is the body which is charged with the responsibility of making final decisions within the local system regarding the control and management of the schools. Ga. Const. art. 8, §5, ¶2 (1983). At the beginning of the hearing, the Superintendent, on behalf of the Local Board, read the Local Board's criteria, and stated that the Local Board would make its decision based upon the criteria. There were statements made, and at least one book review indicated, that Deenie was better suited for junior high aged students than elementary school students. Although the Local Board members did not clearly indicate their reasoning in their decision, their decision reflected consideration of the age and sophistication of the students. Apparently, the Local Board members felt, based on the age and sophistication factor, that the book was not educationally suitable for elementary school students. While findings of fact and conclusions of law would have assisted the reviewer and others reading the decision in understanding the basis for the decision, local boards are not required to make findings of fact and conclusions of law when issuing decisions. Kelson v. The Board of Public Education for the City of Savannah and the County of Chatham, Case No. 1982-15; Hicks v. Dougherty Co. Bd. of Ed., Case No. 1980-30; Wright v. Dodge Co. Bd. of Ed., Case No. 1978-4. See, also, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978).

In light of the above discussion, it is unnecessary to address the Local Board's arguments that the issue of removing a

book from elementary school libraries is not a question or controversy involving school law and that the State Board of Education lacks the power to remand the decision to the Local Board.

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 the Appellants have no standing to bring this appeal and the State Board of Education should dismiss the appeal. In the event the appeal is not dismissed, the Hearing Officer is of the opinion there was evidence to support the decision of the Local Board and the action of the Local Board was not an abuse of its discretion and the decision should be sustained. The Hearing Officer, therefore, recommends the appeal be

DISMISSED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER