

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ERIC B. AND MARK A., )  
Appellants, )  
v. ) CASE NO. 1985-43  
HANCOCK COUNTY BOARD OF EDUCATION, )  
Appellee. )

O R D E R

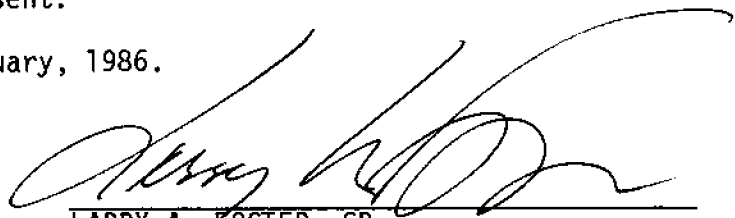
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Hancock County Board of Education herein appealed from is hereby sustained.

Mr. Owens was not present.

This 13th day of February, 1986.

  
LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ERIC B. and MARK A.,                    )  
  )  
  ) Appellants,                            )  
  ) CASE NO. 1985-43  
v.    )  
  )  
HANCOCK COUNTY BOARD                    )  
OF EDUCATION,                            )  
  ) RECOMMENDATION OF  
  ) STATE HEARING OFFICER  
Appellee.                                 )

PART I

SUMMARY OF APPEAL

This is an appeal by Eric B. and Mark A. (hereinafter "Students") from a decision of the Hancock County Board of Education (hereinafter "Local Board") expelling the Students for being in the teachers' lounge, being caught in the closet of the teachers' lounge with a female student, and allegedly being involved in an immoral act. The Students contend on appeal that their constitutional rights were violated by the Local Board. The State Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

On October 4, 1985, the Students were suspended for a minimum of ten (10) days and given notice that a hearing would be held regarding charges that they had been in the teachers' lounge during the school day, they had been caught in a closet in the teachers'

lounge with a female student, and they had been involved in an immoral act while in the teachers' lounge. The notice further listed the witnesses who would testify against the Students and informed the Students that they were entitled to be represented by counsel.

The hearing regarding the above charges was held on October 9, 1985. At the hearing, the Students each testified they had been in a closet in the teachers' lounge with a female student, they had sexual intentions and some sexually related activity occurred. The female student testified that the Students had forcibly involved her in the incident. Other students also testified that the Students had gone into the closet with the female student.

The Local Board, after hearing the evidence and reviewing the Students' disciplinary records, decided to expel the Students.

### PART III

#### DISCUSSION

The Students contend on appeal that their constitutional rights were violated. They contend that the punishment given to all students was arbitrary and unequal, excessive for the offenses involved, sexually discriminatory, that the notice of the hearing was deficient, and that the Local Board members considered information not discussed or presented at the hearing.

The State Board of Education is authorized under O.C.G.A. §20-2-1160 to hear appeals from decisions made by local boards on issues raised before local boards. However, the State Board of Education may only address decisions made on issues which were raised before the local board. 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).

None of the issues raised on appeal were raised before the Local Board in the hearing below. Thus, none of Appellants' issues on appeal would authorize the State Board of Education to reverse the decision of the Local Board.

Even if Appellants' contentions on appeal had been raised at the hearing before the Local Board and considered on appeal by the State Board of Education, they do not present any grounds for reversal of the decisions of the Local Board. There is no evidence the punishment given was arbitrary and unequal, excessive, or sexually discriminatory. The punishment was based upon conduct which was unacceptable and there is no evidence in the record as to the punishment given the female student. Even if the female student received a lesser punishment, the record provides evidence which would have authorized the Local Board to treat the Students differently from the female student. The Students' parents were given notice that the witnesses would testify regarding the alleged immorality. Considering the circumstances, i.e., it was clear as to what the witnesses would be

testifying, and the Students admitted to improper activity, the notice was sufficient. Any reasonable person would understand that the activities to which the Students admitted were unacceptable activities on a school campus. Finally, there is no evidence to support the Students' "belief" the Local Board members considered information obtained outside the hearing or, if so, that it had any effect on its decision.

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 constitutional objections raised on appeal were not raised before the Local Board and, therefore, cannot be brought up on appeal and that, even if they could be brought up on appeal, the Local Board did not violate the Students' constitutional rights. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.

  
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L. O. BUCKLAND  
STATE HEARING OFFICER