

STATE BOARD OF EDUCATION

STATE OF GEORGIA

TONY G.,)	
)	
Appellant,)	
)	CASE NO. 1986-07
v.)	
)	
BIBB COUNTY)	
BOARD OF EDUCATION,)	
)	
Appellee.)	

ORDER

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 appeal from the decision of the Bibb County Board of Education herein appealed from is hereby dismissed.

Mrs. Jasper and Mr. Carrell were not present.

This 12th day of June, 1986.

Larry A. Foster, Sr.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

TONY G.,)	
)	
Appellant,)	CASE NO. 1986—7
v.)	
)	
BIBB COUNTY)	
BOARD OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	HEARING OFFICER

PART I

SUMMARY

This is an appeal by Tony G. (hereinafter “Student”) from a decision of the Bibb County Board of Education (hereinafter “Local Board”) not to request an appeal to the Georgia High School Association (hereinafter “GHSA”) of a decision regarding the eligibility of the Student for the high school basketball team. Appellant contends this decision is a violation of the Student’s due process and equal protection rights. The Local Board contends the appeal is moot and should be dismissed or, in the alternative, that the decision was not arbitrary and capricious and should, therefore, be affirmed. The Hearing Officer recommends the appeal be dismissed.

PART II

FACTUAL BACKGROUND

The Student in this case was a senior in high school this past school year. The Student was denied the opportunity to participate as a player on the high school varsity basketball

team as a result of an interpretation by the School Administration that the Student was not eligible due to the migratory rule of the GHSA. The migratory rule is a rule which prohibits a student from participating in varsity athletics if he or she moves to another school district without their parent or legal guardian also moving at the same time.

In the present case, the Student and his mother made several changes of residence in the 1984-85 school year. Officials of the School Administration determined that those changes of residence made the Student ineligible to participate in varsity athletics under the migratory rule. The Student requested that the question of his eligibility be submitted to the GHSA and the administration officials, based on their belief there was no real question involved, refused to submit the necessary forms. The Student appealed the actions of the School Administration to the Local Board by letter dated December 7, 1985. The Local Board heard the appeal on December 17, 1985 and decided not to authorize the submission of the eligibility form to the GHSA.

The record contains a notice of appeal dated December 31, 1985, which notice of appeal requested the State Board of Education to order a transcript to be filed on the Student's behalf without cost to the Student. The record was not submitted to the State Board of Education until March 14, 1986.

PART III

DISCUSSION

The Student argues on appeal that his due process and equal protection rights have been violated because of the migratory rule, because of the failure of the Local Board to give prior notice of actions which may later result in deprivation, and because the Local Board failed to

follow its own rules as to the Student's right of review. He contends the migratory rule is in violation of the U. S. Constitution in that it restricts his right to travel, and that the rule violated his rights to equal protection. He contends that the rule was not explained prior to the time he inadvertently violated the rule and, thus, the rule is fundamentally unfair. Finally, he contends that by adopting the rules of the GHSA, which provide for hardship appeals, the Local Board is precluded from arbitrarily depriving the Student of the benefits of the GHSA review.

The Student's first two arguments, that the migratory rule violates the Student's equal protection and due process rights and that the failure of the Local Board to give prior notice of the rule is fundamentally unfair, are not properly before the State Board of Education on appeal. The State Board of Education is only authorized to hear appeals from decisions made by local boards on contested issues. Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Boney v. Cnty. Bd. of Ed., 203 Ga. 152 (1947). The Local Board, in the hearing below, did not rule on the validity of the migratory rule nor did it rule whether prior notice of the rule had been given or was required by law. The Local Board simply determined it would not require its administrator to submit a request to determine the eligibility of the Student. Thus, the validity of the migratory rule or notice of the migratory rule is not properly before the State Board of Education on this appeal.

The Student's final contention on appeal, that the Local Board acted arbitrarily when it refused to submit the question of the Student's eligibility, is now moot. The record reflects the Student is a senior who wished to play basketball hoping to be chosen for a college scholarship. Counsel for the Student requests any available remedy for the Student but in his brief recognizes no remedy is available and requests the State Board of Education to prevent the harm which occurred to this Student from ever occurring in the future. Counsel is asking for a legislative remedy. The process of appeals to the State Board of Education under O.C.G.A. §20-2-1160 is a judicial proceeding aimed at correcting the rights of an aggrieved party. Where no

action can be taken by the State Board of Education to protect the rights of the aggrieved party, as is the case in this instance, because the Student has already missed basketball for his senior year, the appeal should be dismissed as moot.

Even if the appeal were not moot, it does not appear that the action of the Local Board was arbitrary and capricious. The Local Board was able to review the facts and make a determination that, under the GHSA rules, the question of ineligibility was clear and there was no reason for them to submit the request for eligibility. While one might disagree that the rule should be applied to prevent the Student from being ineligible, it can hardly be said that no rational reason for the Local Board's decision exists. The Student had moved several times and it appeared that his movement would, under the terms of the migratory rule, prevent him from participating in varsity athletics.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the appeal is moot

Chairperson, State Board of Education

because the State Board of Education cannot, by its decision, remedy the Student's grievance.

The Hearing Officer, therefore, recommends the appeal be

DISMISSED.

L. O. BUCKLAND
Hearing Officer