STATE BOARD OF EDUCATION

STATE OF GEORGIA

HERMAN PEAVY,	)	
Appellant,	)	
	)	**CASE NO. 1986-12**
v.	)	
	)	
HOUSTON 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 Houston County Board of Education herein appealed from is hereby dismissed for mootness.

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

HERMAN PEAVY,	)	
	)	
Appellant,	)	
	)	**CASE NO. 1986-12**
v.	)	
	)	
HOUSTON COUNTY BOARD OF EDUCATION,	)	
	)	
	)	**RECOMMENDATION OF**
Appellee.	)	**HEARING OFFICER**

PART I

SUMMARY OF APPEAL

This is an appeal by Herman Peavy (hereinafter "Appellant") from a decision of the Houston County Board of Education (hereinafter "Local Board") to uphold their local policy which provides that if either of the natural parents live in the county "the student must attend the school in which the residence of the natural parent is located without regard to whether the student lives with the parent or with a guardian...." Appellant contends the policy is in direct opposition to the opinion issued by the State Board of Education in Shannon P. v. Houston Cnty. Bd. of Ed., Case No. 1985-38. The Local Board contends the appeal should be dismissed for failure to file briefs with the State Board of Education, the State Board does not have jurisdiction over local zoning policies, the question is moot because Appellant is now recognized as being a resident of the district he wishes his daughter to attend, and Appellant has no standing because his father is now his daughter's guardian. The Hearing Officer recommends the decision of the Local Board be reversed.

PART II

FACTUAL BACKGROUND

Appellant is the father of Shannon P. Appellant has had his father made the guardian of Shannon P. in order that Shannon P. might help take care of Appellant's father and mother who are elderly and not in good health. Over the past few years, Shannon P. was allowed to attend the

school serving the area of her guardian (Appellant's father) until a change in Local Board policy required students to attend the school serving the area where their natural parent lives regardless of guardianship. Because Appellant lived in a different school district in the county, this policy would require Shannon P. to change schools. Appellant appeared before the Local Board on September 10, 1985 to request that Shannon P. be allowed to remain in the school serving her guardian's residence. The Local Board denied that request and Appellant attempted to appeal that decision to the State Board of Education on October 10, 1985. Because Appellant failed to properly file that appeal, the decision of the Local Board was sustained. However, the State Board of Education issued an order in Shannon P. containing the following statement:

"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."

Appellant established his residence in the same school district as his father by moving into a trailer located in the same school district as his father's residence. Officials of the Local Board have now recognized the trailer as his residence and have allowed Shannon P. to attend the school which serves the residence of the guardian because it is also the school which serves Appellant's new residence at his trailer.

Appellant appeared before the Local Board of Education on March 11, 1985 to challenge the Local Board policy which reads in part as follows:

> If either of the natural parents lives in Houston County, the student must attend the school in which the residence of the natural parent is located without regard to whether the student lives with the parent or with a guardian...

Appellant challenged the policy as being in violation of the opinion of the State Board of Education in Shannon P. and beyond the Local Board's authority in that the Local Board does not have the authority to determine legal guardianship. The Local Board agreed to study

Appellant's request and at a Local Board meeting on March 24, 1986, the Local Board moved to maintain its policy. The stated reason for maintaining the policy was that a Federal Court order exists which controls school zoning by the Local Board. The Local Board maintains that the order is very clear in prohibiting only movement of students which affects the ratio of white and blacks on a school campus and that this policy was to prohibit such movement. The Local Board then voted to continue the policy.

Appellant filed this appeal in a timely manner.

PART III

DISCUSSION

Appellant contends on appeal that the decision of the Local Board is in direct contradiction to the opinion of the State Board of Education in Shannon P. and the policy is beyond the authority of the Local Board.

The Local Board contends the appeal should be dismissed for failure to comply with the procedures of the State Board of Education regarding the filing of briefs, the State Board of Education does not have jurisdiction or authority to interpret or change the court order establishing zoning in Houston County, the issue is moot because Appellant's daughter is being allowed to attend the school in which the guardian resides, and that Appellant has no standing because the policy does not affect him since guardianship has been transferred to his father.

If Appellant is correct that the policy exceeds the Local Board's authority, the Local Board's arguments do not require sustaining the Local Board's decision. First, Appellant did file a brief with the State Board of Education and such was received by the Hearing Officer. Second, while it is true the State Board of Education does not have the authority to interpret or change the Federal Court order establishing zoning in Houston County, the State Board of Education does have the authority to consider this appeal from the decision of the Local Board because the Local

Board has not shown how the local policy affects the zoning required by the Federal Court. The Local Board operated under the court order without the policy for fifteen years and has not shown how the lack of the policy created a violation of the Federal Court order. The Federal Court order allowed the Local Board to establish certain attendance zones and these zones were based upon the school nearest the home. There is no evidence in the record that the Federal Court has in any way required the challenged policy be adopted. If the Federal Court has required such a policy, then the Local Board would be correct in its argument that jurisdiction of the issue has been removed from the State Board of Education. However, no such requirement exists to the Hearing Officer's knowledge. The argument that the issue is moot because Appellant's daughter is now attending the school in the guardian's attendance zone and that Appellant has no standing because he has transferred guardianship to his father do not address the fact that Appellant is challenging a local policy which is currently requiring him to maintain his domicile in the same district as his father in order for his daughter to attend school in that district. Appellant, even though he has given up custody of his daughter, still has an interest in his daughter's welfare, especially when the policy he is challenging is aimed at the Appellant. Under current Georgia law, the policy of the Local Board which is being challenged by Appellant is beyond the authority of the Local Board.

O.C.G.A. § 20-2-671 currently provides in part:

> Admissions to all public schools shall be gratuitous to all eligible children residing in the districts in which the schools are located.

Although this code section stands repealed effective July 1, 1986, it is currently the law in Georgia. While the term "district" might be interpreted to mean the entire county school district, it is more reasonable to interpret that term as meaning the district within the county which the student would normally attend if residing in that district. For example, the term "district" is used to denote subdivisions of the county in O.C.G.A. § 20-2-431 as opposed to the entire county. Residence has been generally interpreted to mean the domicile of the child which is defined under O.C.G.A § 19-2-4, as follows:

(a) If a minor child's parents are domiciled in the same county, the domicile of that child shall be that of the parents. If a minor child's parents are divorced, separated, or widowed, or if one parent is not domiciled in the same county as the other parent, the child's domicile shall be that of the custodial parent. The domicile of an illegitimate minor child shall be that of the child's mother.

(b) Where a child's parents have voluntarily relinquished custody of the child to a third person or have been deprived of custody by court order, the child's domicile shall be that of the person having legal custody of the child. If there is no legal custodian, the child's domicile shall be that of his guardian if the guardian is domiciled in this state. If there is neither a legal custodian nor a guardian, the domicile of the child shall be determined as if he were an adult.

Thus, a child who has, as is the case in this instance, had legal custody and legal guardianship transfered from his parents is entitled, under Georgia law, to attend school in the district of his guardian's domicile. Without legal authority to the contrary, it would appear that the policy issued by the Local Board and challenged by Appellant is beyond the authority of the Local Board because it controvenes state law.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of the parties, the Hearing Officer is of the opinion the challenged policy exceeds the authority of the Local Board. The Hearing Officer, therefore, recommends the decision of the Local Board be

REVERSED.

L. O. BUCKLAND
Hearing Officer