STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN H. SHOCKLEY,	)	
	)	
Appellant,	)	
	)	
v.	)	**CASE NO. 1986-26**
MORGAN 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 decision of the Morgan County Board of Education herein appealed from is hereby sustained.

Mrs. Jasper was not present.

Mr. Carrell abstained.

This 11th day of September, 1986.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN H. SHOCKLEY,	)	
	)	
Appellant,	)	**SBE CASE NO. 1986-26**
	)	
v.	)	
	)	
	)	
MORGAN COUNTY BOARD OF EDUCATION,	)	**RECOMMENDATION OF HEARING OFFICER**
	)	
Appellee.	)	

PART I

SUMMARY

This is an appeal by John H. Shockley (hereinafter "Appellant") from a decision of the Morgan County Board of Education (hereinafter "Local Board") to continue its policy of not allowing its school buses to travel on private roads to pick up students. Appellant contends on appeal that the Local Board's policy is arbitrary and unreasonable and denies his children equal protection of the laws. The Local Board contends it was not sitting as a court under O.C.G.A. § 20-2-1160 and thus the State Board of Education lacks jurisdiction in the matter and that the policy and actions of the Local Board are within its discretion. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant lives on a private road with his residence being nine-tenths of a mile from the public road and point where the school bus will pick up his four children. The Local Board has a policy, which was adopted prior to 1975, that provides in part:

"School buses will not be operated on private roads or roads not maintained by county or state agencies." Thus, Appellant's children have to walk nine-tenths of a mile to the point where the bus will pick them up.

Appellant appeared before the Local Board on January 14, 1986, and on February 13, 1986, and requested that the Local Board send the school bus to his house to pick up his children. At the meeting on January 14, 1986, Appellant brought two witnesses, the county commissioner and the superintendent of roads, to verify that a school bus could travel on the road. At that meeting, the Local Board voted to table the request until the February meeting. At the February meeting, the Local Board discussed the request but a motion to change or make an exception to the policy was not made.

Appellant again appeared before the Local Board April 10, 1986. At that meeting, it was uncontested that the private road was safe at the present time. Appellant contended the Local Board should waive its policy and, based upon a case decided by the West Virginia Supreme Court, Kennedy v. Board of Education, McDowell County, 337 S.E.2nd 905 (W.Va. 1985), the Local Board was required to drive on private roads to pick up the children. The Local Board,

after listening to Appellant's argument, took no action either affirming or denying Appellant's request. Appellant then filed this appeal.

PART III

DISCUSSION

Appellant contends on appeal that the Local Board's policy is arbitrary and unreasonable and denies his children equal protection of the laws. Additionally, Appellant contends the Local Board's actions violates the rules and regulations of the State Department of Education.

The Local Board contends it was not sitting as a court under O.C.G.A. § 20-2-1160 and the State Board of Education thus lacks jurisdiction in the matter. Additionally, the Local Board argues that its policy and actions are within its discretion.

The State Board of Education has jurisdiction to decide the appeal. Appellant appeared before the Local Board with the specific intention of having a hearing which would be appealable to the courts. The Local Board, due to its previous meetings with Appellant, was well aware of the nature of the issues before it and that Appellant was contesting a matter of school law. The Local Board's failure to take action on the specific request of the Appellant after the hearing clearly constitutes a decision to deny his request and thus presents a matter appealable to the State Board of Education.

Even though the State Board of Education has jurisdiction to decide the appeal, it cannot, however, substitute its judgment for the judgment of the Local Board. The State Board of

Education follows the "any evidence" rule on appeals under O.C.G.A. § 20-2-1160. Thus, if there is any evidence to support the decision of the Local Board, absent an abuse of discretion or a violation of law by the Local Board, the State Board of Education is bound to sustain the Local Board's decision. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11.

The Local Board of Education acted within its authority and did not abuse its discretion in refusing to change or waive its policy. The evident purpose of the Local Board's policy is to protect the health and safety of the students riding its buses. While the private road Appellant lives on is apparently safe at the present time, the Local Board appropriately pointed out that the private road is not maintained by the county. Thus, the Local Board has a valid reason in choosing to operate only on publicly maintained roads, i.e., that publicly maintained roads are more likely to be safe for the transportation of Students than private roads because of the public maintenance. The Local Board's policy, therefore, and its decision not to change or waive its policy, does not constitute an abuse of discretion.

Appellant also contends in his brief that the Local Board's policy is in violation of the regulations and procedures of the State Department of Education. One requirement in the regulations and procedures manual is that a student not be required to walk over a half mile to a trunk bus route. Appellant contends that the Local Board's policy, at least with respect to his children, violates that requirement. Appellant, however, did not raise this issue before the Local Board and thus it cannot be raised on appeal. 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). Additionally, the regulations cited by Appellant concern the requirements for funding the Local

Board's transportation program. These regulations are intended as requirements for local boards to receive funding and are not directory requirements. If a local board violates these requirements, the appropriate action is for the State Board of Education to begin to withhold funds for failure to comply with the rules and regulations. The State Board cannot order the Local Board to comply with these requirements under the hearing and appeal process provided for in O.C.G.A. § 20-2-1160.

Appellant's contention, therefore, does not provide any grounds for reversal of the Local Board's decision.

PART IV

RECOMMENDATION

Based on the foregoing discussion, the record presented, and the briefs and arguments of the parties, the Hearing Officer is of the opinion the Local Board did not abuse its discretion in refusing to change or waive its policy. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED

L. O. BUCKLAND
State Hearing Officer