

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DERRICK C. SMITH,

Appellant,

V.

**WILKINSON COUNTY BOARD OF
EDUCATION,**

Appellee.

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CASE NO. 1986-48

DECISION

PART I

SUMMARY

This is an appeal by Derrick S. (hereinafter “Student”) from a decision of the Wilkinson County Board of Education (hereinafter “Local Board”) not to promote the Student to the sixth grade. The Student’s father (hereinafter “Appellant”) is representing the Student on appeal. Appellant contends the decision of the Local Board was arbitrary and capricious. The Local Board contends it acted within its authority. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

The Student was in the fifth grade during the 1985-1986 school year. In order to be promoted to the sixth grade, the Local Board required a student to:

1. complete the 3 reader (Scott Poresman) or Level 10 (keytext).
2. Score at or above the 25th percentile on the TTBS
Iowa Test of Basic Skills) in Reading.
3. Score at or above the 25th percentile on the ITBS in mathematics.
4. Master 80% of the skills on the fifth grade language arts skills list.
5. Master 80% of the skills on the fifth grade math skills list.
6. Have fewer than 25 days of absences.

7. Maintain a 70 average as shown on the report card in at least four of the following subjects:

Reading, Math, Spelling, English, Science, Social Studies.

The Student met all the above criteria with the exception of numbers 2 and 3. The Student scored at the 12th percentile on the ITBS in reading and at the 9th percentile on the ITBS in Mathematics, even though he was able to score high enough to pass criteria 4, 5 and 7. Since the Student did not meet criteria 2 and 3, he was retained in the fifth grade.

Appellant requested a hearing to contest the decision of the Student's principal to retain his son in the fifth grade. The Local Board provided the Student a hearing on September 9, 1986. At the hearing, Appellant issued an opening statement in which he contended the test was not used for its intended purpose and the skills assessed on the test were not taught. Appellant presented no testimony or evidence, but did question the Local Board's witnesses. The Local Board presented testimony by the principal of the Student's school that the promotion criteria used by the school were developed by the teachers at the school, that the parents of the students were notified of the criteria, and that the reason objective tests, such as the ITBS, were used was to take some of the subjective judgment from the teachers concerning promotion and retention. She further testified that the objectives on the test were incorporated into the curriculum. A representative of the company that developed the test testified that the test measured basic skills and is provided to school districts for use for various purposes.

At the end of the hearing, the Local Board voted to retain the Student in the fifth grade for the 1986-1987 school year. Appellant filed this appeal improperly by mailing it to the State Superintendent of Schools, but the appeal was forwarded to the Local School Superintendent in sufficient time to meet the thirty day requirement for filing.

PART III

DISCUSSION

Appellant contends on appeal that the decision of the Local Board was arbitrary and capricious. First, it is his position that the test is a diagnostic tool which is to be used for remediation, and that it should not be used to create the penalty of retention. Second, he contends that the procedure used to establish the policy was unclear and, therefore, the policy was arbitrarily set. Third, he contends that the objectives on the test had not been taught to the Student and it is unfair to penalize the Student for not meeting the requirement.

In support of his arguments, Appellant cited Hobson V. Hansen, 269 F. Supp (D.D.C. 1967) and Debra P. v. Turlington, 474 F. Supp. 244 (M.D. Fla. 1979). Hobson is inapposite to this case as in that case the testing methods were used to place students into ability groups. Here, the Student was retained to repeat the fifth grade because he had not demonstrated he had learned what approximately seventy-five percent of fifth grade students have demonstrated they generally know. Debra P. was a case in which students were denied high school diplomas based on tests which tested on objectives the State of Florida could not demonstrate were taught. In the present case, promotion, not a diploma, was denied, and the uncontradicted testimony was that the objectives on the test were taught.

Appellant recognizes on appeal that the Local Board has broad powers in making policies for the instructional programs, and to establish academic standards for courses. He argues, however, that the test should be given at the beginning of the year, and if a student is deficient in a particular area, then remedial instruction should be given during the year. The Student's grades during the year indicated that he was performing satisfactorily, and he was able to pass the skills requirements, criteria 4 and 5, of the test. These factors did not provide any indication that the Student would possibly be retained in the fifth grade.

Absent a clear abuse of discretion, or violation of law, the decision of the Local Board must be sustained by the State Board of Education if there is any evidence to support 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

State Board of Education is not authorized to substitute its judgment for that of the Local Board, as to whether the required score on the ITBS is a desirable policy.

Appellant has mischaracterized the retention as a penalty. While it may be true that the Student, his parents, and his peers see the retention as a penalty, the Local Board and its employees are justified in believing that retention is in the Student's best interest. The Student has not, in two attempts at taking the test, been able to demonstrate that he has learned what a vast majority of his peers have demonstrated they have learned. The local Board can logically take the position that, for the Student to be allowed to continue from grade to grade without being able to demonstrate that he has that knowledge, would be more of a penalty to the Student than retention. At any rate, retention in the fifth grade certainly does not equate with the denial of a high school diploma.

Appellant's contention, that the local Board abused its discretion, does not warrant reversal of the decision of the Local Board. The testimony demonstrated that educators in the system recommended adding the test in order to establish some objective criteria for promotion, that notice of the test requirement was provided to parents, and that the objectives tested were taught. Thus, the Local Board demonstrated a reason for the test requirement, and the test requirement was not arbitrary and capricious.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of the parties or their counsel, the decision of the Local Board was not arbitrary or capricious. The decision of the Local Board is therefore,

SUSTAINED.

Dated this 8th day of January, 1987.

LARRY A. FOSTER, SR.
Vice Chairman of Appeals