

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. S.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1996-51
vs.	:	
	:	DECISION
EVANS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by J. S. (Student) from a decision by the Evans County Board of Education (Local Board) not to allow him to graduate from the eighth grade because of excessive absences during the 1995-1996 school year. The Student claims that the decision was arbitrary and capricious and the Local Board failed to follow its own policies. The Local Board's decision is reversed.

The Local Board's attendance policy for elementary and middle school provides:

A student is allowed to miss only twenty (20) days per school year in kindergarten through eighth grades. Any student missing twenty (20) or more days per school year is subject to be retained in their present grade. A committee consisting of the school principal, counselor (Middle School), the student's teacher/s, the social services coordinator, and superintendent or designee will meet during the last week of the school year and decide if students who have missed twenty (20) or more days will be promoted.

Evans County Schools Student Handbook, p. 15.

There was testimony that the Student had twenty-two (22) excused absences during the 1995-1996 school year. The Student, however, was notified of only being absent twenty-one (21) days, and the transcript of his records show he was absent for only twenty-one (21) days. The absences resulted from the divorce of the Student's parents. With the exception of the period when the divorce was taking place, the

Student has not had any problem with absences. Notwithstanding his absences, the Student's grades for the year were 98, 98, 97, 95, 95, and 71. The 71 grade was in algebra.

The record shows that school has a policy of informing students' parents when the students' absences are excessive. In this case, however, the record shows that the Student's mother apparently was not notified because the custodian of the records was unaware the parents had divorced and the notices were forwarded to the Student's father in Colorado. In addition, the record shows that the Student's principal and the middle school counselor did not attend the meeting to decide whether the Student should be promoted. The Local Board failed to present any evidence that would justify retaining the Student in the eighth grade.

The Local Board argues that since there is evidence that the Student missed more than twenty (20) days from school, its decision must be affirmed by the State Board of Education. Additionally, the Local Board argues that its *de nova* review of the matter cured any procedural defects that arose because the committee was irregularly constituted.

The "any evidence" rule is applicable in our review unless a local board's decision is arbitrary and capricious. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In our view, the Local Board's decision in this case was arbitrary and capricious.

As indicated, the Local Board failed to present any evidence to justify why the Student should repeat the eighth grade. The Student's grades show that he was near the top of his class, so there is little academic value in having him repeat. The Local Board argues that retaining the Student in the eighth grade will encourage his regular attendance and help him develop useful life habits. There is, however, no evidence that the Student has not already learned these lessons. On the contrary, the record shows that the Student did not have an attendance problem except for one brief period. In the seven previous years, he only missed a total of 23 days. Without some showing that retention of the Student has some educational value, we conclude that the Local Board's decision was arbitrary and capricious.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was arbitrary and capricious and, therefore, is hereby REVERSED.¹

This 14th day of November, 1996.

Robert M. Brinson
Vice Chairman for Appeals

¹ The State Board of Education's Vice-Chairman for Appeals issued a supersedeas order staying the Local Board's decision, which permitted the Student to go into the ninth grade for the 1996-1997 school year. The effect of this decision is to permit the Student to remain in the ninth grade.