

STATE BOARD OF EDUCATION, STATE OF GEORGIA

HONEYCUTT

CASE NO. 1975-17

VS.

APPEAL

MUSCOGEE COUNTY BOARD
OF EDUCATION

ORDER

This is a pupil assignment case which arises from good faith and commendable efforts of the Muscogee County Board of Education to comply with a Desegregation Plan approved by the Federal Court for the desegregation of schools in Muscogee County, Georgia.

The issue here is whether to allow Teresa Catherine Honeycutt to go to school within the district where her parents live or allow her to continue to attend the school within the district where her grandparents live, with whom she resides, according to the evidence.

The case was presented for review before the State Board of Education by stipulation of facts. From these facts, Muscogee County Board of Education does not appear to challenge the claim that Teresa actually lived with her grandparents, presently and mostly since birth. Rather, the School Board relied on established policy found in Section 800.433 of the School Board Policy Manual which provides:

"The residence of pupils shall be determined by the residence of their parents."

The School Board argues that unless there is hardship exception, this is the rule which must be followed and Teresa must go to school within the district of the residence of her parents.

The State Board of Education reverses the Muscogee County Board of Education.

While it is true that the above quoted Section of School Board Policy is applicable, the same policy goes on to say:

"The term 'parents' as herein used shall include (g) a child who lives with a grandparent and who makes his home permanently with one of his grandparents may be considered a resident of the County...."

The record on appeal is replete with evidence to substantiate the allegations that Teresa actually lived with her grandparents and is conspicuously absent of any evidence presented by the School Board to the contrary. Clearly from the record Teresa lived with her grandparents and they resided in Muscogee County and within the school district where Teresa was enrolled and attended school.

We note that the Federal Court Desegregation Plan, as quoted in the brief of the School Board, reads:

"Except as hereinafter provided, all white students and all Negro students who register on the registration dates for the next ensuing school year as determined by the Superintendent, shall be assigned by the Superintendent and his staff in said school year to the neighborhood school nearest the residence of said student which then has space available and has less than its quota of white or Negro students, as the case may be, then assigned to said school." (emphasis ours)

It appears that the plan of desegregation was written to consider the residence of the student and not that of the parent, which is inconsistent with School Board Policy Section 800.433.

There is another reason the local School Board decision cannot be upheld, for this writer is especially concerned by the manner in which the Appeal of Request for Reassignment was handled.

The procedures for the "Appeal" are thorough and fair and if followed offer the appellant adequate steps of

review. As set forth in the statement of facts, these steps are:

- (a) Review, hearing and determination by a standing Principals' Committee.
- (b) Review and determination by the Superintendent of Education.
- (c) Review and hearing by a Special Committee comprised of Board Members of Muscogee Board of Education.
- (d) Review, hearing and determination by the full Board of Education of Muscogee County.
- (e) And if necessary, appeal to the State Board of Education.

However, in this case Teresa's parents (or their attorneys) were given a form on November 5, 1975, to be completed with supporting affidavits necessary for appealing the decision. On November 10, 1975, the attorney for the parents was notified that the Principals' Committee (Step 1) had met that day and had disapproved the appeal, but there were no reasons given for the denial of the appeal. The appellants were not informed when the Principals' Committee met and were not given an opportunity to be present and state their position. Just two days later, on November 12, 1975, the Superintendent wrote the appellants a letter that he had reviewed the Principals' Review Committee Report and that he too had denied the appeal, but gave no reasons for the denial and did not afford the appellants an opportunity to present their contentions. This was Step 2 of the appeals process. Two days after that, November 14, 1975, appellants were called to appear before the Special Committee of the Board of Education for Step 3 of this administrative ladder. The appellants did appear and were afforded an opportunity to present their case and were notified by the Special Committee of their decision to deny the appeal at 9 o'clock a.m. on November 17, 1975, (without any reason being given) but that the full Board of Education was meeting that night at 7:30 p.m. and would hear from the appellants. The


appellants appeared before the full Board of Education that evening but only the witnesses for the appellants were sworn, witnesses for the School Board were not, and the appellants were not given an opportunity to cross examine the opposing witnesses. At the conclusion of this hearing, the School Board voted by secret ballot six to five to reject the appeal.

All of the administrative steps had been accomplished within a period of eight days. The very essence of procedural due process is adequate notice of hearing and the right to a fair hearing. Often it is difficult to define what due process of law really is, but the foregoing in fact and by example is not.

We reverse the Muscogee County Board of Education.

By all members of the State Board of Education except Mr. A. J. McClung, who dissents, and Mrs. Carolyn Huseman, who was absent.

This the 11 day of March, 1976.


Richard Neville
Vice Chairman for Appeals