

STATE BOARD OF EDUCATION

STATE OF GEORGIA

VERNETTE FOREMAN,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1980-13
	:	
BURKE COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, and after a vote in open meeting,

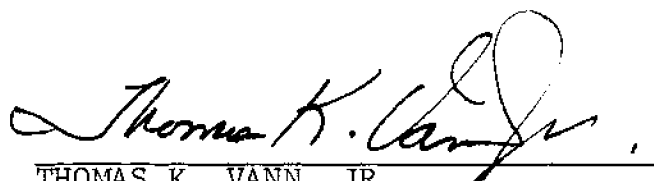
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the appellant herein should have been granted admission to the Burke County School System because he had attained the age of 18 and could attain and had attained his own residency in Burke County at the time of the hearing before the local board, and because of such attainment, all other issues in the case are moot, and no decision is made on such moot issues, and

DETERMINES AND ORDERS, that the decision of the Burke County Board of Education herein appealed from is hereby reversed.

Mr. McClung and Mr. Smith were not present.

This 14th day of August, 1980.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

AUG 25 1980

STATE BOARD OF EDUCATION
STATE OF GEORGIA

VERNETTE FOREMAN,	:	CASE NO. 1980-13
	:	
Appellant,	:	
	:	
vs.	:	REPORT OF
	:	
BURKE COUNTY BOARD OF	:	HEARING OFFICER
EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Vernetta Foreman (hereinafter "Appellant") from a decision by the Burke County Board of Education (hereinafter "Local Board") denying him admittance to the Burke County School System because of its determination he was not a resident of the County. Appellant has appealed to the State Board of Education on the grounds that the evidence does not support the decision of the Local Board. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II
FINDINGS OF FACT

Appellant, who was 18 years old at the time of the hearing, applied for entrance to the Burke County School System on January 2, 1980. On January 28, 1980, he was denied entrance because his parents were not residents of the county and he was not living with a legal guardian. He appealed to the Local Board and a hearing was held on March 18, 1980. The Local Board issued a decision on April 8, 1980 denying admittance to the school system. An appeal was filed to the State Board of Education on May 2, 1980. The Local Board had adopted a local policy which stated:

"Students enrolled in the Burke County school system must be living with their parents or legal guardian and that said parent or guardian must be a bona fide resident of Burke County."

Therefore, individuals living out of Burke County could not send their child to live with someone in Burke County merely for the purpose of attending school."

The Local Board found that the requirement of domicile and residence had not been met.

The transcript shows that Appellant's father was in the army and stationed overseas. His mother worked in North Carolina. Appellant left home upon the completion of the eleventh grade in the summer of 1979. From July, 1979 to December, 1979 he worked in Kentucky where he was living

with his sister. During this period, he retained the money he received and paid his own expenses. His grandmother called and asked him to come to Burke County and finish his education. He arrived in Burke County on December 15, 1979 and began living with his grandmother. He made application to enter the Burke County School System but was denied entrance. The record shows that Appellant's grandmother was not his legal guardian, but his parents approved of his living with his grandmother. She provided him with board, room and clothing and he looked to her for guidance and direction. Appellant's parents did not provide any support or control, but looked to his grandmother for such control.

At the hearing before the Local Board, Appellant raised the issue that he had established his residence in Burke County. In addition to the facts of the lack of parental control and the retention of the fruits of his labors, Appellant was eighteen at the time of the hearing before the Local Board. The Local Board did not introduce any contrary evidence, but merely relied on the residence or domicile of Appellant's mother and father and the lack of any formal guardianship or contract relinquishing the parental rights.

PART III
CONCLUSIONS OF LAW

Appellant has appealed to the State Board of Education on the grounds that the evidence establishes that Appellant was domiciled in Burke County; he was a resident of Burke County; he was denied due process of law by the Local Board's application of an irrebuttable presumption of ineligability; the Local Board's policy lacks any rational basis and therefore results in a denial of equal protection of the law, and the Local Board's policy violates the privileges and immunities clause of Article IV, Section 2 of the United States Constitution and the privileges and immunities clause of the 14th amendment to the United States Constitution by denying free travel from state to state. The Local Board responds by stating that the policy requires a student to be with his parents or legal guardian who must be a resident of Burke County. The Local Board also points to Ga. Code Ann. §32-937 which provides that admission to the school system shall be gratuitous only to children residing within the district. The Local Board also argues that under the provisions of Ga. Code Ann. §74-108, Appellant's parents had not lost parental control, and under the provisions of Ga. Code Ann. §79-404 the domicile of the minor is the domicile of the parents.

Based on these provisions, the Local Board concluded that Appellant was not a bona fide resident of Georgia.

Ga. Code Ann. §74-108 provides:

"Until majority, the child shall remain under the control of the parents, who are entitled to his services and the proceeds of his labor...

"This parental power shall be lost by:

"1. Voluntary contract, releasing the right to a 3rd person.

....

"3. Failure to provide necessary support for the child....

"4. Consent to the child's receiving the proceeds of his own labor, which consent shall be revocable at any time."

Ga. Code Ann. §79-404 provides that:

"The domicile of every minor shall be that of his father, if alive, unless such father shall have voluntarily relinquished his parental authority to some other person. In such event

the domicile of the minor shall be that of the person to whom parental authority has been relinquished...."

Ga. Code Ann. §32-937 provides:

"Admissions to all common schools shall be gratuitous to all children between the ages of 6 and 19 years residing in the districts in which the schools are located."

The Local Board relied solely on the provision of

Ga. Code Ann. §79-404 that the residence of a minor shall

be that of his father. The Local Board did not address the issue that Appellant was no longer a minor at the time of the hearing, thus making the provisions of Ga. Code Ann. §79-404 no longer applicable. Appellant, however, established that he was resident in Burke County. The very basis for the Local Board's decision was, therefore, inapplicable and there was no evidence presented to otherwise sustain the decision of the Local Board. The Hearing Officer, therefore, concludes that Appellant had established both his residence and domicile in Burke County at the time of the hearing, and the Local Board should have permitted Appellant to enroll in its schools.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions of law, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant should have been admitted to the Burke County School System. The Hearing Officer, therefore, recommends that the decision of the Burke County Board of Education

denying Appellant admittance to the Burke County School System be reversed.

L. O. Buckland
L. O. BUCKLAND
Hearing Officer

Appearances: For Appellant, Kent E. Silver; for Local Board, W. M. Fulcher.