

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MCNEIL, ET AL.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1980-16
	:	
WHITFIELD 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 Conslusions 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 Whitfield County Board of Education herein appealed from is hereby affirmed.

Mr. McClung and Mr. Smith were not present.

This 14th day of August, 1980.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

FREIDA MCNEIL, ET AL.	:	CASE NO. 1980-16
	:	
Appellants,	:	
	:	
vs.	:	REPORT OF
	:	
WHITFIELD COUNTY BOARD	:	HEARING OFFICER
OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by a group of citizens from the Dawnville Elementary School attendance zone in Whitfield County (hereinafter "Appellants") from a decision by the Whitfield County Board of Education (hereinafter "Local Board") to redistrict the attendance zones for the high schools within Whitfield County and a decision denying them a formal hearing for presenting their objections. The redistricting plan adopted by the Local Board resulted in new high school students from the Dawnville Elementary School attendance zone having to go to a different high school than previous graduates of Dawnville Elementary School. Appellants were aware of the plan and representatives of the Dawnville residents attended meetings of the

Local Board and expressed their dissatisfaction with the plan before it was adopted.

Appellants maintain they were not given a hearing as required by Ga. Code Ann. §32-910, and the action of the Local Board in adopting the redistricting plan was an abuse of discretion. They also argue that if they were given a hearing, they were denied due process because they were not given notice, were not represented by counsel, and were not given an opportunity to present witnesses or cross-examine witnesses.

Ga. Code Ann. §32-910(a) provides that the local board of education shall constitute a tribunal for hearing contested issues "in reference to the contruction or administration of school law...." Ga. Code Ann. §32-910(b) provides that any

"party aggrieved by a decision of the local board of education rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education."

If, as Appellants maintain, a hearing has not been held, then this appeal must be dismissed because the State Board of Education does not have jurisdiction in the absence of a hearing. Baney v. County Bd. of Educ., 203 Ga. 152 (1947).

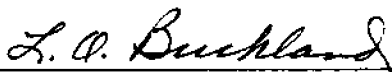
The Local Board argues that there has been a hearing by virtue of Appellant's representatives attending the Local Board meetings and expressing their dissatisfaction

with the redistricting plan. If there has been a hearing, then the issues are whether Appellants have been denied due process and whether the Local Board abused its discretion in adopting the redistricting plan.

Decisions regarding site selections and the fitness and suitability of selected sites are wholly within the discretion of the local board of education, Smith v. Ouzts, 214 Ga. 144; Boney v. County Bd. of Ed., supra. See also, Peagler v. Thigpen, 223 Ga. 723 (1967). Since such decisions are wholly within the discretion of the local board of education, they do not involve the interpretation, application, or enforcement of existing law or the determination of the interests of adverse parties. They are, therefore, administrative decisions rather than quasi-judicial decisions. See, Mayor of Union Point v. Jones, 88 Ga. App. 848, 849 (1953). If the proceeding was quasi-judicial, Appellants would have been entitled to notice, a hearing, and the right to examine and cross-examine witnesses. Anderson v. McMurray, 217 Ga. 145 (1961). In an administrative proceeding, however, the Local Board was free to gather its facts in the manner it deemed necessary. Ga. Code Ann. §32-910(a) provides that a local board has the "power to summon witnesses and take testimony, if necessary...." (Emphasis added). Since an absolute right to present witnesses does not exist under the statute,

and an administrative decisions was involved, the Hearing Officer concludes that the Appellants were granted a sufficient hearing to provide an appealable decision, but they were not denied any rights by not being able to enter into a formal judicial proceeding.

The decision of a local board will be interferred with only if there is a showing that the local board has acted without legal authority, Davis v. Jarriel, 223 Ga. 624 (1967), or there has been such a gross abuse of discretion so as to amount to a violation of law, see McKenzie v. Walker, 210 Ga. 189, 190 (1953). A local board of education has the legal authority to reorganize the schools within its jurisdiction, Ga. Code Ann. §32-954, so the Local Board was acting with legal authority. The Hearing Officer also concludes that even if all of Appellant's assertions were accepted as fact, there has not been any showing of a gross abuse of discretion on the part of the Local Board. Based upon the foregoing, the Hearing Officer recommends that the decision of the Whitfield County Board of Education adopting the redistricting plan be sustained.



L. O. BUCKLAND
Hearing Officer

Appearances: For Appellants, Robert B. Adams; for Appellee,
F. Gregory Melton