STATE BOARD OF EDUCATION

STATE OF GEORGIA

C.E.	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 1980-20
	:	
HART 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, a copy of which is attached hereto, and after a vote in open meeting,

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

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

Mr. Vann and Mr. Stembridge were not present.

This 9th day of October, 1980.

LARRY A. FOSTER
Acting Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CALVIN E Appellant, vs. HART COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1980-20 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Calvin E a student, (hereinafter "Appellant"), from a decision by the Hart County Board of Education (hereinafter "Local Board") to place him on one year probation after finding that he had purchased a quaalude pill from another student. Appellant has appealed to the State Board of Education on the grounds there was no credible evidence before the Local Board to permit its decision, and the Local Board improperly postponed his hearing, thereby subjecting him to the loss of grades without the benefit of due process. The Hearing Officer recommends that the decision of the Hart County Board of Education be reversed.

PART II

FINDINGS OF FACT

On April 3, 1980, Appellant was charged by the principal of his high school with purchasing a quaalude pill from another student. Appellant was immediately suspended and a hearing before the Local Board was scheduled for April 15, 1980. The hearing began on April 15, 1980, with Appellant and his counsel present, but the Local Board then postponed the hearing to April 21, 1980 over the objection of Appellant's counsel. The hearing was held on April 21, 1980 and, immediately after the hearing, the Local Board decided that Appellant did make a purchase and placed him on a one-year probation. Appellant thereafter appealed to the State Board of Education on May 19, 1980.

The Local Board made the single finding that Appellant had purchased a quaalude pill from another student. The student, however, denied making the purchase. The record shows that the only evidence to support the charge was the testimony from one student that he had sold a pill to Appellant during their homeroom period at the beginning of the day. No drugs were found on Appellant and there was testimony from Appellant and another student in the class that Appellant had not made a purchase of any

drugs. Both Appellant and the student who testified in his behalf said that at most Appellant's only contact with the selling student was a possible brief acknowledgment of the other's presence in the room.

Appellant was absent from school for more than ten days because of the suspension and the postponement of the hearing. The Local Board had a rule in effect that if a student missed more than ten days of school, the student would receive failing grades for the quarter. When asked about the possibility of Appellant receiving failing grades as a result of being out of school for more than ten days because of the postponement of the hearing, the Local Board refused to rule and left the matter to the Local Superintendent. Appellant was reinstated in school following the hearing and placed on "probation" for one year.

PART III

CONCLUSIONS OF LAW

The Local Board argues that the appeal should be dismissed because the issues are moot in that Appellant was returned to school for the remainder of the 1979-1980 school year and has started the 1980-1981 school year. See James v. Washington County Bd. of Ed., Case No. 1978-8. The Hearing Officer, however, concludes that the issues are not

moot because the penalty of probation was imposed for one year, which extends into the third quarter of the 1980-1981 school year. Additionally, the case is not moot because of the procedural errors made by the Local Board.

Appellant argues that the evidence was insufficient for the Local Board to make a finding that he had purchased a quaalude pill from another student. The State Board of Education follows the rule that if there is any evidence to support the decision of a local board of education, the local board's decision will not be disturbed upon review. Antone v. Greene County Board of Ed., Case No. 1976-11. In the instant case, there was testimony before the Local Board from the selling student that he sold a pill to Appellant. The Local Board chose to accept the testimony of the selling student over the opposing testimony of Appellant and another student. There was some evidence before the Local Board that Appellant did make a purchase. Under the "any evidence" rule, this is sufficient to support the Local Board's decision.

Appellant also maintains the Local Board erred in not granting his motion to dismiss following the April 15, 1980 continuance. Appellant appeared with counsel on April 15, 1980 and was prepared to go forward. The school system, however, was not prepared so the Local Board continued the hearing for an additional six days. During the

continuance, Appellant was absent another four days in addition to the eight days he was absent before April 15, 1980. Appellant argues that because he was absent for more than ten days, the school administration entered failing grades for all of his courses for the last quarter of the 1979-1980 school year.

The Local Board admits that the reason it did not go forward with the hearing on April 15, 1980, was because the school system was not prepared. When the issue of the extra days of absence and the possibility of the failing grades was raised at the hearing, the Local Board refused to make a decision and stated that it was a matter to be handled by the school administration. Although there is no evidence in the record that Appellant was denied passing grades, the undenied allegation illustrates that Appellant either could have or has suffered substantial harm because of a delay which was imposed by the Local Board and not by Appellant. The delay resulted in the hearing being held seventeen (17) days after he was suspended.

If serious penalty is to be imposed, a local board of education must provide a higher degree of due process than when a serious penalty is not involved. See Goss v. Lopez, 419 U.S. 565 (1975); Lee v. Macon County Bd. of Ed., 49 F2d 458,460 5th Cir., (1974). In the instant case, the hearing date was set by the Local Board within

ten (10) school days after the initial suspension and Appellant was ready for the hearing. The Local Board, however, postponed the hearing and thereby exposed Appellant to the serious harm of subjecting him to the possible loss of grades for one quarter. Basic fairness indicates that such a result should not obtain when the delay was not caused by the actions of Appellant. The Hearing Officer, therefore, concludes that when a serious penalty, such as the loss of grades for one quarter, can be imposed regardless of the outcome of the hearing, Appellant has been denied basic due process rights and any further actions by the Local Board or the school administration should be reversed.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Local Board acted improperly by postponing the hearing date and thereby subjecting Appellant to the loss of grades for one quarter regardles of the outcome of the hearing. The Hearing Officer, therefore, recommends that the decision of Hart County Board of Education be reversed with direction

that Appellant be granted the grades he earned during the final quarter of the 1979-1981 school year.

L. O. BUCKLAND
Hearing Officer