

STATE BOARD OF EDUCATION

STATE OF GEORGIA

REGINA J., :  
Appellant, :  
v. : CASE NO. 1980-32  
MUSCOGEE 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 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 decision of the Muscogee County Board of Education herein appealed from is hereby affirmed.

Mr. Stembridge was not present.

Mr. McClung abstained.

This 8th day of January, 1981.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

REGINA J.,	:	
	:	
Appellant	:	
	:	CASE NO. 1980-32
v.	:	
	:	REPORT OF HEARING
MUSCOGEE COUNTY BOARD	:	OFFICER
OF EDUCATION,	:	
	:	
Appellee	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Regina J. (hereinafter "Appellant") from a decision by the Muscogee County Board of Education (hereinafter "Local Board") to deny her request for readmission to school following a decision by the Local Board to expel her because she had cut another student with a knife. The appeal is made on the grounds a May 19, 1980, decision to expel Appellant was ultra vires and denied Appellant due process of law, and the decision denying readmittance also denied her due process of law. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II  
FINDINGS OF FACT

On May 19, 1980, the Local Board made a decision to expel Appellant after a hearing determined that she had cut another student with a knife. The hearing, which was conducted by the Superintendent's Discipline Committee on April 16, 1980, determined that the attack on the other student had occurred on April 4, 1980. The other student required 30 stitches in order to close the wounds to her head, ear, and chest. The stabbing was witnessed by two teachers and Appellant did not deny she had used the knife. Appellant's only assertions during the hearing was that there were extenuating circumstances because the other student had been threatening her for a period of time. Prior to the hearing before the Superintendent's Committee, Appellant's mother was notified of the charges and of her right to be represented by counsel. The Superintendent's Committee recommended expulsion and the recommendation was sent to the Local Board. Appellant's mother was notified that she had a right to appeal the decision of the Superintendent's Committee and could appear before the Local Board.

The Student and her mother appeared before the Local Board on May 19, 1980, when the Local Board considered the recommendation of the Superintendent's Committee. The Local

Board, after hearing from the Student and reviewing the recommendation of the Superintendent's Committee, voted to expel Appellant from school.

At the time of the expulsion, the rules adopted by the Local Board provided:

"Expulsion means that a student will be permanently removed from school unless the Board determines at some future time to readmit her/him."  
Student Behavior Code and Discipline Policy, adopted May 17, 1976.

Appellant did not appeal the expulsion decision by the Local Board. She did, however, submit a request on September 8, 1980, to be readmitted. The Local Board took up Appellant's request on September 15, 1980, and, after hearing from Appellant's mother and a Department of Human Resources service worker, decided on September 16, 1980, not to permit Appellant to return to school. The Local Board did not make any findings or state any reasons why Appellant could not return to school.

### PART III

#### CONCLUSIONS OF LAW

Appellant's appeal to the State Board of Education is based on two claims: The May 19, 1980, decision to permanently expel without providing alternative education means was ultra vires because the Local Board's regulations went beyond State

law, and the decision not to readmit Appellant denied her due process because the Local Board failed to issue a written decision containing findings of fact.

Appellant makes the initial argument that the May 19, 1980, decision was ultra vires because State law, Ga. Code Ann. §32-856(c), defines expulsion as "expulsion from a public school beyond the current school quarter or semester" whereas the Local Board has defined expulsion to mean "that a student will be permanently removed from the school . . . ." Appellant argues that the Local Board has expanded the definition of expulsion beyond the period of time permitted by statute and any expulsion imposed by the Local Board is therefore not permitted. The Hearing Officer does not believe there is any inconsistency between the definitions, nor does the Local Board's definition go beyond that provided by the General Assembly. The definition contained in the statute includes that of the Local Board by merely providing that an expulsion is applicable to any exclusion from the public school which extends beyond the current quarter. The statutory definition sets a minimum limit on the amount of time, but it does not set a maximum. In other words, the statutory definition includes periods which can last either one day or last through the period contained in the definition provided by the Local Board. The Hearing Officer,

therefore, concludes that the Local Board's decision to permanently expel Appellant was not ultra vires.

The second claim is that the September 15, 1980, decision violated Appellant's due process rights because it did not contain any written findings of fact or reasons why the Local Board would not readmit Appellant. It is Appellant's argument that the policy of the Local Board provides that a student can be readmitted if "the Board determines at some future time to readmit her/him." An expelled student, therefore, has a right to be readmitted which has been granted by the Local Board. If the right is denied to a student, then due process must be observed when the denial is made. One of these due process rights would be the right of Appellant to know the facts or reasons on which the Local Board relied in order to determine what standards must be met in order to gain readmittance. In the absence of standards, Appellant maintains that she is subject to the capricious whims of the members of the Local Board.

The Local Board argues that it is not required to provide written findings of fact. The Local Board also argues there is no question why Appellant was expelled and additional reasons for not readmitting her do not have to be made.

In Kemp, et al. v. Jefferson City Bd. of Ed., Case No. 1978-3, it was argued that permanent expulsion violated the

students' substantive due process rights because the local board had not established any relationship between the need for permanent expulsion and valid school disciplinary concerns. The argument was rejected as premature because there was the possibility of readmittance. The Hearing Officer observed that the local board would have to show that the students were violating the standards applicable to students who were attending school in order to continue excluding them.

The State Board of Education, however, in Sloan v. DeKalb Bd. of Ed., Case No. 1978-26, decided that a local board could permanently expel a student "when the student is involved in an incident which is threatening to himself and other students", and could require the student to show cause why he should be readmitted. Additionally, the State Board of Education has held that a local board of education is not required to make findings of fact. Wright v. Dodge County Bd. of Ed., Case No. 1978-4; Beard v. Laurens County Bd. of Ed., Case No. 1977-14. Based upon these decisions of the State Board of Education, the Hearing Officer concludes that the Local Board did not err in failing to provide Appellant with findings of fact when it denied Appellant's petition to be readmitted.

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 within its authority when it expelled Appellant and did not deny Appellant any due process rights when it did not provide findings of fact or state reasons for not readmitting Appellant. The Hearing Officer, therefore, recommends that the decision of Muscogee County Board of Education be sustained.

*L. O. Buckland*

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L. O. BUCKLAND  
Hearing Officer