

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MICHELE C., :
Appellant, :
v. : CASE NO. 1981-12
CLINCH COUNTY BOARD :
OF EDUCATION, :
Appellee. :

O R D E R

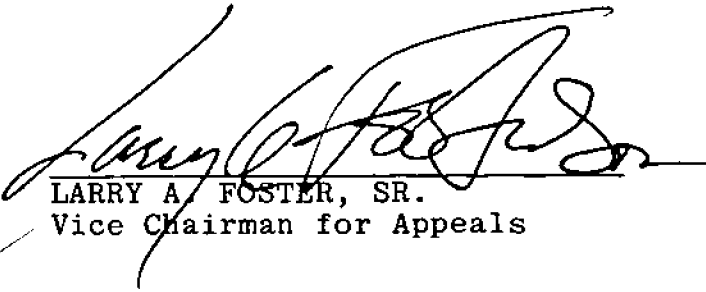
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Clinch County Board of Education herein appealed from is hereby reversed.

Mr. McClung was not present.

This 9th day of July, 1981.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

before the Local Board, but was stated as in existence when the record was forwarded to the State Board of Education. There was also no evidence introduced concerning the circumstances under which the rule was applicable, or whether excused absences were to be counted in the eight days.

Appellant was absent for a total of thirteen days during the winter quarter of the 1980 - 1981 school year. She was sick with the flu for seven days, visited the dentist on two days, was sick with other illnesses on three days, and was truant on one day. The Local Board had a policy which excused absences because of contagious diseases, infectious diseases, and other diseases. A Hospital Homebound program was in existence, but Appellant was not eligible for participation because her disease was considered to be contagious. The policy does not provide an excuse in order to see a dentist. Appellant, therefore, had excused absences for ten of the thirteen days she missed. In spite of her absences, Appellant passed all but one of her courses.

Appellant was notified that she and her parents would have to appear before an attendance appeals committee which would consider her absences. The committee met and recommended that Appellant be failed for the winter quarter. Appellant appealed the decision to the Local Board. The Local Board met on March 12, 1981 and received testimony and evidence. The Local Board then decided to deny Appellant her grades for

the winter quarter. The Local Board did not make any findings of fact or give any reasons for its decision. Appellant's appeal to the State Board of Education was filed on March 19, 1981.

PART III

CONCLUSIONS OF LAW

Appellant, who was not³ represented by counsel, argued that the rule was wrong and that the decision of the Local Board was unfair. The Local Board argued that Appellant was aware of the rule and no basis exists for not applying the rule against Appellant.

There is no indication in the record whether the Local Board's policy is applicable when a student has medically excused absences. As applied in the instant case, however, even if a student has a medical excuse for an absence, the absence is counted in determining whether a student has missed eight days. A student could, therefore, be sick for eight days and would receive failing grades for the quarter, regardless of whether the student was able to maintain the classwork and receive passing grades on all examinations. The Local Board provided a Hospital Homebound program, but the rule does not provide that a student's participation would result in passing grades for the quarter. There was no evidence introduced by the Local Board concerning the

rationale of a rule which denied students their grades if they had medical excuses.

Although the rule is stated as a mandatory rule, the record contains evidence that the Local Board exercised discretion in deciding whether the policy would be applied to any particular student. In other words, some students could miss more than eight days and be granted their grades, while others would be denied their grades. The Local Board did not have any guidelines on how the discretion would be exercised.

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 decision will not be disturbed upon review. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Ed., Case No. 1976-11. This rule is controlling unless some error of law is shown, or the decision of a local board of education is an arbitrary and capricious action. The evidence in the instant case shows that the decision of whether to fail a student for the quarter was entirely discretionary with the Local Board and the Local Board did not have any guidelines. As applied, any two students could be absent for eight days for identical illnesses, over which they had no control, and the Local Board could decide to pass one student and fail the other. The Local Board also has not

shown any reasonable basis for failing a student who has an excused absence from school because of an illness. The effect of the Local Board's policy is to force student's into the classroom, regardless of whether they have a contagious disease, or alternatively, place themselves totally at the mercy of the whims of the Local Board in deciding whether they will pass or fail the quarter. The Hearing Officer concludes that such a rule is unreasonable and has been unreasonably applied by the Local Board such that the actions of the Local Board are arbitrary and capricious.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and argument of counsel and the parents, the Hearing Officer is of the opinion that the decision of the Local Board was based upon an unreasonable rule that has been unreasonably applied such that the actions of the Local Board are arbitrary and capricious and therefore outside the scope of their authority. The Hearing Officer therefore, recommends that the decision of the Clinch County Board of Education that Appellant should fail the winter quarter be reversed.

Appearances: For Parents - pro se; For Clinch County Board of Education - Thomas C. Chambers III

L. O. Buckland

L.O. Buckland
Hearing Officer