

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MICHAEL PAINO,

)

Appellant,

)

v.

)

CASE NO. 1983-9

SPALDING COUNTY BOARD OF EDUCATION

)

Appellee.

)

O R D E R

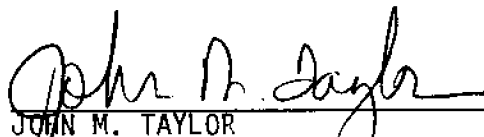
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 appeal is hereby dismissed because the State Board of Education lacks jurisdiction.

Mr. Foster was not present.

This 8th day of March, 1984.



JOHN M. TAYLOR

Acting Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| MICHAEL J. PAINO, |) | |
| |) | |
| Appellant |) | |
| |) | |
| v. |) | CASE NO. 1983-9 |
| |) | |
| GRIFFIN-SPALDING COUNTY |) | |
| BOARD OF EDUCATION, |) | |
| |) | REPORT OF |
| Appellee |) | HEARING OFFICER |

This is an appeal by Michael J. Paino (hereinafter "Appellant") from a decision by the Griffin-Spalding County Board of Education (hereinafter "Local Board") which denied him a hearing on his charges that a counsellor in the high school his son attended gave improper advice and failed to perform because the son was denied credits for a gifted course. Appellant maintains that his due process rights were violated because the Local Board denied him a hearing. The Hearing Officer recommends dismissal of the appeal because the State Board of Education lacks jurisdiction.

Appellant's son was initially enrolled in the Griffin-Spalding County School System during January, 1982. Appellant attempted to have his son enrolled in a gifted class. Records from the student's previous school, however, were not immediately available and the student's enrollment in the gifted class was postponed until spring quarter, 1982. Appellant asked that his son be given credit for the gifted class for the winter quarter,

1982, because of some work he performed. The school administration denied the credits since the student had not attended the gifted classes during the winter quarter. Appellant sought a meeting before the Local Board, and on June 8, 1982, he met with the Instruction Committee of the Local Board. The Instruction Committee heard from both the school administration and Appellant. On June 14, 1982, the Local Board received the recommendation of the Instruction Committee and agreed not to grant the student any gifted class credits for the winter quarter, 1982.

Appellant again sought a hearing before the full Local Board, and on July 12, 1982, Appellant appeared before the entire Local Board. The Local Board voted to affirm its June 14, 1982 decision not to grant any credits to the student. On August 27, 1982, Appellant wrote a letter to the Local Board and requested a hearing, which would "meet the minimum requirements for the State Board of Education to review," on his charges that the School System failed to provide him and his son with adequate guidance counselling and placement, and failed to take affirmative action to prevent a recurrence of the problem. Appellant was notified by a letter dated September 2, 1982, that his appeal was not timely because it was made more than thirty days after the decision of the Local Board.

On December 28, 1982, Appellant again requested that he be given an opportunity to appear before the Local Board in order to discuss the charges he made in his August 27, 1982

letter. Appellant appeared before the Local Board on January 10, 1983, and explained his situation. The Local Board voted to consider Appellant's request for a hearing. The Local Board had one of its members investigate the charges. At its February 14, 1983 meeting, the Local Board voted against granting Appellant a hearing. This appeal to the State Board of Education followed, but a hearing was postponed upon Appellant's request because of his work requirements.

O.C.G.A § 20-2-1160 requires a local board to conduct a hearing before the State Board of Education has jurisdiction to hear an appeal. Mallard v. Warren, 222 Ga. 731, 152 S.E.2d 380 (1966). In the instant case, the Local Board did not conduct a hearing and there are no legal requirements imposed on local boards of education to grant a hearing to a citizen who brings charges against the administrative officers of the school system. The State Board of Education, therefore, does not have jurisdiction to hear an appeal.

Appellant claims that he was denied due process because he was not granted a hearing. In order for constitutionally protected due process to exist, there must be some infringement on Appellant's rights to property or on his personal freedom. The statutes, however, do not grant citizens any right to have a hearing before local boards when charges are made against the administrative officers of the system. Appellant argued that he wanted a hearing in order for the Local Board to hear his

charges that the administrative officials were improperly performing their duties. Appellant's quest is not one which should be decided either in the courts or by the State Board of Education. The management and control of the local school systems is constitutionally vested in the local boards of education. This leaves the decision of whether to act or not act upon any charges entirely within the discretion of the Local Board. The denial of a hearing, therefore, does not infringe upon any of Appellant's property rights or upon his personal freedoms or any statutory rights. Appellant, therefore, has not been denied due process.

Appellant also cannot claim that he was denied due process because the appeal he filed on August 27, 1982, was never forwarded to the State Board of Education. O.C.G.A § 20-2-1160 requires an appeal to be filed within thirty days after a decision by a local board of education. Even if the Local Board's action on July 12, 1982 was considered to be an appealable action, the appeal was untimely because it was made after the thirty day period.

Appellant claims that he was not informed by the Local Board or by any of the administrative officials that he had to appeal within a certain period of time. Since Appellant was acting without the benefit of counsel, his plight is understandable, but it nevertheless does not impose any legal duty upon the administrative officials to inform him of the statutory limitation periods.

Based upon the foregoing findings and conclusions, the record submitted, and the arguments and briefs of Appellant and the Local Board, the Hearing Officer is of the opinion that the State Board of Education is without jurisdiction to entertain Appellant's appeal since a hearing was not held by the Local Board. The Hearing Officer, therefore, recommends that the appeal be dismissed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer