

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOE and PATRICIA THOMPSON, et al. )

Appellants, )

v. )

CASE NO. 1983-27

DEKALB COUNTY BOARD OF EDUCATION, )

Appellee, )

LINDA and RANDY GENTRY, et al., )

Appellants, )

v. )

CASE NO. 1983-28

DEKALB 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 DeKalb County Board of Education herein appealed from is hereby sustained.

All members were present.

This 10th day of November, 1983.



LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOE and PATRICIA THOMPSON, et al.	)	
	)	
Appellants,	)	CASE NO. 1983-27
	)	
v.	)	
	)	
DEKALB COUNTY BOARD OF EDUCATION,	)	
	)	
Appellee,	)	
	)	
LINDA and RANDY GENTRY, et al.,	)	CASE NO. 1983-28
	)	
Appellants,	)	
	)	
v.	)	
	)	REPORT OF
DEKALB COUNTY BOARD OF EDUCATION	)	HEARING OFFICER

Both of the cases presented here involve the decision made on June 8, 1983, by the DeKalb County Board of Education (hereinafter "Local Board") to close four elementary schools. Appellants in Case No. 1983-27 are appealing the decision to close the Rehobeth Elementary School, and Appellants in Case No. 1983-28 are appealing the decision to close the Northwoods Elementary School. The facts and issues in both instances are, for all relevant purposes, the same, and the cases have, therefore, been consolidated.

Appellants complain on appeal that they were given improper notice of a hearing, the Local Board failed to properly conduct hearings, the decisions were improper, and Appellants were improperly denied an opportunity for a re-hearing. The Local Board

argues that hearings were not required, but, nevertheless, were held with proper notice, that Appellants have failed to show any injury, the Local Board acted properly, and the issues are moot. The Hearing Officer recommends that the Local Board's decision be sustained.

On May 9, 1983, the Local Board, at a regularly scheduled public meeting, directed the Local Superintendent to present recommendations on May 23, 1983, on whether any elementary schools should be closed for the 1983-1984 school year. At a public meeting on May 23, 1983, the Local Superintendent recommended closing four elementary schools, which included the Rehobeth Elementary School and the Northwoods Elementary School. The Local Board then voted to conduct public hearings at the four schools on May 26, May 30, June 2, and June 6, 1983, "for the purpose of taking the recommendations to the public." Within one or two days before the hearing at each school, the children in the affected schools were given notices of the meeting at the particular school to deliver home to their parents.

The meetings were held on the prescribed dates and were attended by the Local Board members and administrative officials of the DeKalb School System. The recommendations and the reasoning behind the recommendations were presented, and the members of the public were permitted to make their presentations, voice their objections, and ask questions.

At its regularly scheduled meeting on June 8, 1983, the Local Board discussed the recommendations and the public comments.

The Local Board then voted to close the four elementary schools. Appellants filed motions for reconsideration with the Local Board on July 1, 1983 and July 6, 1983. Appeals to the State Board of Education were filed on July 7, 1983. On July 11, 1983, at a regularly scheduled meeting, the Local Board voted to deny the motions for reconsideration.

Appellants appealed on the grounds that the decision to close the schools: (1) was improper, arbitrary, capricious, and denied them reasonable notice and due process of law; (2) was made without proper investigation; (3) was made without reference to any criteria; (4) was against the best interests of the children enrolled because they would be sent to schools which had not attained the level of excellence attained by the closed schools; (5) necessitates busing; (6) did not take into consideration the adverse impact on the children and the neighborhood; (7) was made without the holding of a proper hearing; (8) would result in higher costs; (9) was made without serious consideration of alternatives; (10) would result in the destruction of close-knit neighborhood schools; (11) was unduly influenced by a report made by the DeKalb Chamber of Commerce, and (12) would work an undue hardship on the students and parents. In addition, Appellants claim that the Local Board improperly denied their motions for reconsideration.

O.C.G.A. § 20-2-1160 provides:

Every county ... board of education shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the construction

or administration of the school law, with power to summon witnesses and take testimony if necessary; and when such local board has made a decision, it shall be binding on the parties.

... The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

The State Board of Education has adopted rules concerning hearings before the local boards of education. Rule 05-315, concerning hearings by the local board before an initial decision is made, provides:

In such cases the [local] board shall give such notice as will, under the circumstances, be reasonably calculated to apprise the interested parties of the time and place of hearing, and the issues to be decided. All interested parties shall file, at least two days prior to such hearing, a written statement of their contentions to the same extent as hereinbefore required as to motions for reconsideration. All other proceedings thereafter shall be conducted in the same manner as hereinbefore provided for motions for reconsideration.

Rule 05-313 provides for the filing of a motion for reconsideration if the local board makes a decision without first holding a hearing. Concerning hearings held when a motion for reconsideration has been granted, Rule 05-314 provides:

At said hearing, all witnesses shall be sworn by the chairman or any member of the board or its attorney. The local board shall cause the testimony and other evidence to be transcribed by a court reporter or other appropriate means. On all issues not quasi-judicial in nature, such as questions relating to school consolidation, transportation routes and practices, merger of schools and pupil placement, the local board may read into the record the basis of its decision previously reached, which shall constitute a part of the evidence in the

case. All witnesses sworn and testifying shall be subject to reasonable cross examination, but the strict rules of evidence prevailing in courts of law shall not be applicable to hearings before local boards. At the conclusion of the hearing the local board shall render its decision ...

Appellants argue that they did not receive notice two days in advance of the hearings so that they could file the statement of contentions required by Rule 05-315, the witnesses were not sworn at the public meetings, and the Local Board did not read into the record the basis of its decision, as required by Rule 05-314. They also argue that the granting of the motion for reconsideration was mandatory under the rules of the State Board of Education and the denial of the motion was improper.

The Local Board argues that O.C.G.A. § 20-2-1160 requires witnesses and the taking of testimony only "if necessary," and the determination of necessity is left with the Local Board. The Local Board also argues that Appellants were given notice of the hearings on May 23, 1983, more than two days in advance of the hearings, so they had time to prepare. Additionally, the Local Board has not complained of Appellants' failure to file a statement of contentions two days in advance of the hearing, so the two day rule has not injured them. The Local Board also argues that local board members are not subject to cross-examination, but they, nevertheless, did submit to questioning, and the public was given an opportunity to present testimony. Although the witnesses were not sworn, the Local

Board points out that there have not been any allegations that the testimony was false, or that additional testimony would not be cumulative of that already provided. The Local Board also argues that there was no necessity for a rehearing since a hearing was held before a decision was made and the rules of the State Board of Education contemplate a rehearing only in the event a decision is made without a hearing. Finally, the Local Board argues that all issues are moot because the schools have been closed, the students and teachers have been transferred, and a reversal of the decision would create chaos in a system that is already in place.

The record shows that the Local Board announced at its May 23, 1983, public meeting that hearings would be held before the public where the recommendations of the Local Superintendent to close the four elementary schools would be presented. There does not appear to be any requirement placed upon the Local Board to provide personal notice to each affected person. Rule 05-315 provides that the notice to be given shall be such as to "be reasonably calculated to apprise the interested parties of the time and place of hearing, and the issues to be decided." Since the announcement was made at a public, regularly scheduled meeting, the Hearing Officer concludes that Appellants were given adequate notice of the hearings.

The record also shows that the Local Board did not make a decision regarding the closing of the schools until after the hearings were held. Rule 05-313 requires a rehearing only in

those cases where the local board makes a decision before holding a hearing. Since the decision in the instant cases was not made until after the hearings, those portions of the rules concerning reconsiderations are not applicable. It was not, therefore, necessary for the Local Board to read into the record the basis for its decision, as set forth in Rule 05-314.

The only possible violation of the State Board of Education's rules for the conduct of hearings before local boards of education concerns the requirement set forth in Rule 05-314 that the witnesses will be sworn and be subject to cross-examination. The transcripts do not indicate that there was any motion, call, or request made at the hearings that the witnesses be sworn. As the Local Board points out, there have not been any allegations made that any witnesses made any false statements, even though they were not given an oath. Rule 05-314 does provide that "the strict rules of evidence prevailing in courts of law shall not be applicable to hearings before local boards." The transcript shows that the Local Board and the administrative officials responded to questions posed by the hearing attendees and that the objections, suggestions, complaints, arguments, and points to consider were fully raised at the hearings.

The control and authority of local schools is constitutionally vested with the local boards of education. Their decisions regarding the operation of the schools are not reversible by the State Board of Education unless such decisions are arbitrary and



capricious and clearly contrary to law. In the instant cases, the Local Board gave notice to the public that it would hold hearings to consider the recommendations to close the elementary schools, the reasons for the recommendations were communicated to the public, and the public had an opportunity to present additional considerations and arguments to the Local Board. Appellants' only argument for having additional hearings and sworn testimony is for the purpose of presenting the Local Board with additional information. The Hearing Officer concludes that the purposes to be served by having sworn testimony were fulfilled in the instant cases, and the Local Board's decision was made only after consideration of many factors. The Hearing Officer, therefore, concludes that the lack of sworn testimony did not create a reversible error.

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 decision of the Local Board was not arbitrary and capricious or contrary to law, and that any errors committed did not adversely affect any interests of Appellants. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.

  
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L. O. BUCKLAND  
Hearing Officer

[Appearances: For Appellants Thompson, et al. - David L. G. King, Jr.; James A. Mackay; Mackay, Cordes, Daniel & King; For Appellants Gentry, et al. - Edward E. Carter; James C. Watkins; For Local Board - Gary M. Sams; R. Phillip Shinall III; Weekes, Candlere, Sams, Weatherly & Shinall, P.C.]