

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID JONES,	)	
Appellant,	)	
v.	)	CASE NO. 1983-44
HOUSTON 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, but

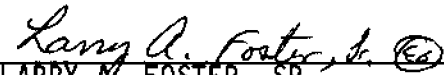
DETERMINES AND ORDERS, that the decision of the Houston County Board of Education was not arbitrary and capricious, and was made in compliance with the law, and

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

Mrs. Huseman voted to reverse the decision of the local board.

Mrs. Jasper abstained.

This 12th day of April, 1984.

  
\_\_\_\_\_  
LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

he believed that Appellant was acting in self-defense when he was tackled from behind. The principal informed Appellant's parents that he would then have to suspend Appellant. When it became apparent that Appellant would be suspended, his parents agreed to permit the principal to administer the whipping.

The principal, however, refused to administer a whipping and insisted upon suspending Appellant. Appellant's parents requested a hearing before the Local Board when the Local Superintendent supported the principal's decision. The Local

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DAVID J.,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NO. 1983-44
	)	
HOUSTON COUNTY BOARD	)	
OF EDUCATION,	)	
	)	REPORT OF
Appellee.	)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of David J. (hereinafter "Appellant"), a student, from a decision by the Houston County Board of Education (hereinafter "Local Board") to suspend him for three days because he was involved in a fight on school property. The appeal was made on the grounds the decision was improper because it discriminated against him, violated due process, and was too severe. The Hearing Officer recommends reversal of the decision of the Local Board.

PART II

FINDINGS OF FACT

Appellant is ten years of age, in the fourth grade, and makes A and B grades. During December, 1983, Appellant was involved in a fight with another student while on school premises. No one witnessed the beginning of the fight, and the school principal was unable to determine who started the fight.

disciplined by whipping, and that Appellant's parents authorized Appellant to receive a whipping.

The Local Board did not make any findings of fact or conclusions in order to support their decision. The decision simply stated that the Local Board upheld the principal's decision to impose a three-day suspension without any explanation of the reason for imposing suspension when the other student had received a whipping for the same incident. The principal and the Local Board apparently feared that Appellant's parents would take legal action if Appellant was given a whipping by the principal.

There were several unsupported allegations made during the hearing concerning Appellant's conduct, the conduct of teachers, and the principal's reactions to different incidents. There were also allegations concerning the amount of notice given to Appellant's parents regarding the hearing, and the loss of grades by Appellant because the suspension was imposed during the last days before the Christmas holidays when his classes were taking final examinations for the quarter.

### PART III

#### CONCLUSIONS OF LAW

The first issue to be decided is whether this appeal is moot because the suspension has already been imposed and served. Since there exists the possibility that Appellant may have suffered from the loss of grades because of the suspension, the

Hearing Officer concludes that the appeal is not moot and can properly be reviewed by the State Board of Education.

Local boards of education are charged with the responsibility and authority of managing the schools within their jurisdiction. Along with this authority and responsibility comes the discretion of imposing reasonable rules regarding the conduct of the students. If the rules are reasonable, then the discretion of a local board of education cannot be disturbed upon review unless there has been such an abuse of discretion so as to constitute an illegal action.

In the instant case, the Local Board had a policy, through its principal, to punish both students involved in a fight when the principal was unable to determine which student started the fight. The principal also had a policy that the punishment was either whipping or suspension. Neither of these policies was challenged during the hearing as being unreasonable, and it appears that the policies are reasonably designed as one answer to the problem of being unable to determine which student starts a fight when they each claim that the other was responsible. The Hearing Officer, therefore, concludes that the policies adopted by the Local Board are valid policies.

The principal issue in the instant case, however, is the application of the policies by the Local Board. As a general rule, if there is any evidence contained in the record to support the decision of a local board, then that decision will not be disturbed upon review. See Ransum v. Chattooga County

Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. In the instant case, however, the only evidence which points to a reason for the Local Board to impose a different punishment on Appellant than was given to the other student arises from a fear that Appellant's parents would institute court action, even though the parents said they would waive all rights in order for Appellant to be punished in the same manner as the other student was punished. This imagined fear does not, however, establish a basis for imposing different punishments, especially when the different methods of punishment have such potentially different results and there exists the possibility that the student who did not start the fight will be the one who suffers the most harm. It is immaterial whether the whipping or the suspension is viewed as the severer form of punishment. The difference in the effects of the two punishments is the critical issue when both students were in the same position since guilt or innocence could not be independently established. Both sets of parents authorized their sons to be whipped. One student received a whipping and thus did not miss any school or tests. Appellant, however, missed three days of classes, and potentially has suffered from grade reductions because of missed tests. If the Local Board wanted to teach Appellant respect for law and order, it is difficult to understand how he can learn to respect an authority that imposes greater sanctions on the potentially innocent than on the potentially guilty when there is an admission

that the authority does not know which party is innocent and which party is guilty. Along with its authority to impose punishment, the Local Board must accept its responsibility for making decisions without being influenced by real or imagined possibilities of legal action being taken.<sup>1</sup>

The Hearing Officer concludes that the action by the Local Board was arbitrary and capricious and constituted an illegal action in that it resulted in unequal treatment for Appellant and thus subjecting him to a much more severe form of punishment than the other student received.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments made, the Hearing Officer is of the opinion that the Local Board's decision was arbitrary and capricious and not based upon any evidence presented at the hearing. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed with direction that Appellant's grades be restored if they have been reduced, and his record cleared of any indication of suspension.

*L. O. Buckland*

L. O. BUCKLAND  
Hearing Officer

---

<sup>1</sup> O.C.G.A. § 2-2-732 absolves principals and teachers from criminal or civil action if they administer corporal punishment in accordance with established policies and regulations if the punishment "is administered in good faith and is not excessive or unduly severe."