STATE BOARD OF EDUCATION

STATE OF GEORGIA

MELVINA D.,	:	
	:	
Appellant,	:	**CASE NO. 1987-34**
	:	
v.	:	
	:	
	:	
BRYAN COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by the mother of Melvina D. (hereinafter "Student") from a decision of the Bryan County Board of Education (hereinafter "Local Board") to retain the Student in the tenth grade because the Student was absent more than ten days in three classes.

PART II

FACTUAL BACKGROUND

The Student is an eighteen year old, handicapped female who is being provided an education pursuant to an Individualized Education Plan (hereinafter "IEP"). The Local Board has a policy of denying credit for a subject if a student misses more than ten days of class in the subject. The Local Board also has a hardship committee that has the authority to restore credit even though the ten-day rule is violated.

The Student missed eleven days in three of her classes. Because her absences in those classes exceeded the ten-day rule, and because four of the absences were because the Student went out of town with her mother, she was not given credit for those classes to enable her to be promoted to the eleventh grade. Although the Student in not considered to have been promoted to the eleventh grade, she is still in the same program she would have been in if she had been considered to have been promoted to the eleventh grade.

The hardship committee met and denied the Student's mother's appeal for reinstatement of credit and the Student appealed that denial to the Local Board.

The Local Board allowed the Student's mother to present her case to it on June 9, 1987, but the Local Board denied the Student's mother's request to grant the Student an exception to the policy. The Local Board notified the Student's mother of their decision on June 11, 1987. The record does not reflect that the Local Board complied with the requirement Of O.C.G.A. §20 2-1160 to notify the party of the method for appeal.

The Student's mother filed this appeal by letter to the State Superintendent of Schools dated August 10, 1987, and marked received by the Department of Education on August 18, 1987. The Legal Assistant for the State Department of Education forwarded the letter to the Local Superintendent and the Local Superintendent forwarded the record for appeal.

PART III

DISCUSSION

Because this appeal was filed more than thirty (30) days after the decision of the Local Board, an initial question arises whether the appeal should be dismissed for lack of

jurisdiction. Appeals to the State Board of Education are to be filed within thirty (30) days after the decision of the Local Board and are to be filed with the Local School Superintendent. The Local Board, however, is also required to provide the parties to a hearing with written notice of the proper method for appeal to the State Board of Education. O.C.G.A. §20-2-1160. As previously

decided in White v. Lamar Cnty. Bd. of Ed, Case No. 1987 14, appeals can be timely filed if filed within thirty days of the date the Local Board issues a written decision and notifies the parties of the method by which they may appeal to the State Board of Education. This appeal was filed with the Local Superintendent, albeit by the Legal Assistant for the State Superintendent, within the time limits since the Local Board failed to comply with the notice requirements of O.C.G.A. §20-2 1160. The merits of the case, therefore, will be considered.

The State Board of Education has previously determined that local boards have the authority to deny course credit for excessive absences. See, Edward E. v. Effingham Cnty Bd of Ed, Case No. 1985-5; Netra Wymbs v. Clarke Cnty Bd of Ed, Case No. 1986-36. The local boards' rules, however, must be clear on whether excused absences can be counted towards the excessive absences. See, Michele C. v. Clinch Cnty. Bd. of Ed, Case No. 1981-12; Robert C. v. Marion Cnty. Bd. of Ed, Case No. 1985 7. In the instant case, the Student's mother has not provided any legal basis for the appeal, but, instead, merely asks for leniency. The State Board of Education is not authorized to substitute its judgment for that of a local board, and must sustain the decision of a local board if there is any evidence to support the local board's decision, absent an abuse of discretion or violation of law by the local board. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11. The testimony in the instant case showed that the rule was clear and the student manual

pointed out that exceptions would only be made if all absences were covered by a note from the doctor or the health department, or if there has been a verifiable death in the immediate family. Thus, the rule was made clear to the Student in advance and was within the authority of the Local Board.

PART IV

DECISION

Based upon the foregoing discussion, the record and the briefs of counsel for the Local Board, the State Board of Education concludes that the Local Board did not abuse its discretion in refusing to make an exception to the ten-day rule. The decision of the Local Board is, therefore,

SUSTAINED.

Mrs. Baranco was not present.

JOHN N. TAYLOR
Acting Vice Chairman Appeals