

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>L.K.B., R.L.D.,</b>	:	
<b>B.D.D., AND G.D.W.</b>	:	
	:	
<b>Appellants,</b>	:	
<b>V.</b>	:	
	:	<b>CASE NO. 1993-13</b>
<b>CLINCH COUNTY</b>	:	
	:	<b>DECISION</b>
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This decision addresses the separate appeals of L.K.B., R.L.D., B.D.D., and G.D.W. (“Students”) from separate decisions by the Crisp County Board of Education (“Local Board”) to deny them credit for their courses during the first semester of the 1992-1993 school year because they each had ten or more absences. All of the Students are seniors and all of the cases were decided by the Local Board on the same day. The Students claim that the Local Board’s decision was arbitrary and capricious. The Local Board claims that it has the authority to maintain attendance and the policy is not arbitrary and capricious. For the reasons set forth hereafter, the Local Board’s decisions are reversed.

**PART II**

**FACTUAL BACKGROUND**

On June 4, 1992, the Local Board adopted a new attendance policy, Policy JBDA. For grades 9 through 12, the policy provides that a student will not receive credit in any class in

which the student has missed ten or more days. All of the Students are in grade 12. The policy replaced an earlier policy that permitted a student to miss fifteen days before losing any credit. The record shows that the Students had notice of the earlier policy, but there is nothing in the record to show that the Students were informed about the new policy.

Student L.K.B. had twelve absences in two classes and thirteen absences in four other classes. All of her absences were excused for medical reasons. Although she needed only one credit to graduate, L.K.B. carried a full academic load and received grades of 90, 95, 95, 94, 97, and 94 in her courses before the Local Board reduced the grades to 69.

Student R.L.D. had twelve absences in four classes and eleven absences in two classes. Of the twelve absences, three were excused and eight were unexcused. In the classes with eleven absences, four were excused and seven were unexcused. Three of the unexcused absences in all of the classes resulted from R.L.D.'s suspension from school for dipping snuff in class. Before the Local Board's decision, R.L.D. had grades of 93, 93, 84, 93, 91, and 88 in his classes.

Student B.D.D. had sixteen absences in one class, twelve excused and four unexcused, fifteen absences in three classes, of which twelve were excused and three unexcused, and fourteen absences in two classes, twelve of which were excused and two were unexcused. The record does not show what B.D.D.s' grades were before the Local Board's decision.

Student G.D.W. had twelve absences in two classes, thirteen absences in one class, and fourteen absences in three classes. In the two classes with twelve absences, he had four and five unexcused absences. In the class with thirteen absences, six were unexcused, and in the three classes with fourteen absences, he had six unexcused in two classes and five unexcused in one class. The record shows only two of the six grades G.D.W. had before the Local Board's decision, an 88 and a 100.

The Local Board did not present any findings of fact and did not have a transcript prepared of its proceedings. Instead, the Local Board submitted copies of the minutes of its meeting as a part of the record after the Students filed a timely appeal to the State Board of Education.

### PART III

### DISCUSSION

Each of the Students argues that the Local Board's decision was arbitrary and capricious because it did not follow the Local Board's policy that permitted up to fifteen absences. There is nothing in the record to indicate that the Students were aware of the new ten-day rule, and the brief submitted by their attorney shows complete ignorance of the ten-day rule. Nevertheless, the Local Board argues that it has the power and authority to adopt the ten-day rule, the Students were aware of the new rule, and the decision regarding each Student was not arbitrary and capricious.

“The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).” Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In this case, however, there is no evidence that the Students had any notice of the new rule. The State Board of Education, therefore, concludes that the Students did not have any notice of the new rule.

Although not raised directly by the Students, the issue presented by this case is whether the Students were denied due process because they did not have notice of the revised policy.

Before taking action against a student for the violation of a policy, the policy has to be communicated to the student. See, Shane W. v. Gwinnett Cnty. Bd. of Educ., Case No. 1986-37 (Ga. SBE, Dec. 12, 1986). In the absence of such communication, a local board of education cannot take action without violating the student's rights of due process.

The State Board of Education has also previously stated that a local board of education has to show a reasonable basis for denying credits to students who have excused absences before such a rule is applied. Michele C. v. Clinch Cnty. Bd. of Educ., Case No. 1981-12 (Ga. SBE, July 9, 1981).

In the instant case, as indicated, there is no evidence in the record that the revised standards were communicated to the Students. Additionally, the Local Board failed to provide any rationale for denying the credits to the Students when they were able to maintain their grades despite the absences. We, therefore, conclude that the old policy, which permitted fifteen absences before credits were denied, has to be applied to these Students.

With the exception of B.D.D., none of the Students had more than fifteen absences in any of their classes. B.D.D. had sixteen absences in one class and fifteen or fewer absences in all the remaining classes. Thus, except for the single class missed sixteen times by B.D.D., the Students met the requirements to receive credit under the old policy.

#### PART IV

#### DECISION

Based upon the foregoing, the State Board of Education is of the opinion the Local Board denied the Students due process by denying them credits for the classes where they missed less than sixteen days. The Local Board's decision, therefore, is sustained regarding the denial of credit to B.D.D. in the class where he was absent sixteen times, but all of the remaining denials

of credit are hereby

REVERSED.

This 8<sup>th</sup> day of July, 1993.

Mrs. King and Mr. Sessoms were not present. Mr. Al Abrams' seat is vacant due to his resignation effective April 30, 1993

Robert M. Brinson  
Vice Chairman for Appeals