

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

C.K.F. and R.K.J.,	:	
	:	
Appellants,	:	
	:	CASE NO 1993-29
vs.	:	
	:	DECISION
PEACH COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by two students (Appellants) from a decision by the Peach County Board of Education (Local Board) that the two students cheated on an examination. The Local Board moved to dismiss the appeal because Appellants (1) did not file the appeal with the Local Superintendent within thirty days after the Local Board made its decision, and (2) Appellants failed to file a copy of the transcript of the hearing before the Local Board. We direct the Local Board to process the appeal upon receipt of a transcript.

On March 17, 1993, the Local Board made a decision that was adverse to Appellants. On March 23, 1993, the Local Board's attorney wrote to Appellants' attorney that the Local Board had voted to sustain the charges against Appellants and "to uphold the actions of the teacher and the administration." The letter did not state when the Local Board made its decision. On April 20, 1993, Appellants' attorney mailed an appeal to the Local Board's attorney with a request for the Local Superintendent to have the transcript of the hearing prepared and sent to the State Superintendent. A copy of the appeal was also sent to the State Superintendent. On May 3, 1993, the Local Board's attorney notified Appellants' attorney that the court reporter wanted an advance payment of \$1,000.00 to prepare the transcript. On June 29, 1993, Appellants' attorney notified the State Superintendent that the Local Superintendent had refused to forward the appeal. The Local Board's attorney responded on July 6, 1993, with the claim that the appeal was untimely and Appellants had failed to file the transcript of the hearing with their appeal. Oral arguments and briefs were made and received on the issues of (1) whether an appeal has to be filed within thirty days after a local board's decision or within thirty days after notice of the decision when the notice does not give the date of the local board's decision, and (2) who is responsible for initially paying the independent reporter for the transcript of the hearing.

O. C. G. A. § 20-2-1160 provides, in part:

the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days

thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the state board. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

O.C.G.A. § 20-2-1160(b) (1993 Supp.).

The State Board of Education regulations provide:

6. At the conclusion of the hearing, or within 15 days thereafter, the [local board of education] shall notify the parties of its decision in writing and shall notify the parties of their right to appeal the decision to the Georgia Board of Education.

(4) Appeals to the Georgia Board of Education

(a) After a hearing by the local board ... any party aggrieved by a decision of the local board ... may appeal to the state board by filing the appeal in writing with the local superintendent....

(b) The party making the appeal shall file with the appeal the complete record, including a transcript of testimony certified as true and correct by the local superintendent or a request that the superintendent transcribe and prepare such transcript, and shall assume the costs of such preparation.

(c) The appeal shall be filed with the [local board of education] within 30 days of the decision in question.

(d) Transmission to State Superintendent. The local superintendent shall, within 10 days after the filing of the appeal, transmit to the state superintendent a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board and other matters in the file relating to the appeal. The appeal may be amended and a transcript filed any time prior to transmission to the state board.

Rules of Georgia Department of Education, Reg. 160-1-3-.04 (Apr. 1991).

Appellants claim the appeal was filed timely because it was mailed within thirty days after the notice of the decision was sent to them. The Local Board claims the appeal was late because it was not even mailed until April 20, 1993, or five days late.

In previous decisions, the State Board of Education has dismissed appeals which were filed late. *See, Barry M v. Houston Cnty. Bd. of Ed.*, Case No. 1993-4 (Ga. SBE, Mar. 11, 1993); *Josh W v. Gwinnett Cnty. Bd of Ed.*, Case No. 1991-15 (Ga. SBE, Jun. 13, 1991). The cases, however, do not indicate when the notice of the decision was sent to the appellants or whether the notice stated when the local boards of education made their decisions. In the instant case, the Local Board's attorney sent a notice on March 23, 1993, that the Local Board had ruled against Appellants, but the letter did not state when the Local Board made its decision.

Our regulations permit a local board of education to make a decision at any time within fifteen days after a hearing. Since the local boards of education can make their decision at any time within the fifteen day period, they control when the thirty-day appeal period begins running. Since the local boards of education control when their decision is made, we hold that the decision will be deemed to have been made on the date of the notice if the notice does not give the date of the decision; if the notice gives the date of the decision, then that date will be deemed the date of decision.

There is no indication in the record when the appeal was received by the Local Board's attorney or the Local Superintendent. For purposes of this decision, therefore, we conclude that the appeal was filed timely when it was mailed on April 20, 1993, which was two days before the deadline. The Local Board may, however, establish that the appeal was not received until after April 22, 1993.

The Local Board also argues that the appeal should be dismissed because Appellants did not pay for the transcript and file a transcript with the appeal. O.C.G.A. § 20-2-1160, set forth on page 2, provides that the appellant has to file a transcript with the appeal, but it requires the State Board of Education to adopt regulations governing the taking of appeals. Our Reg. 160-1-3-.04, set forth on page 2, provides two methods for fulfilling the transcript requirement: (1) filing the transcript with the appeal, or (2) requesting "the superintendent [to] transcribe and prepare such transcript..." In both instances, the appealing party "shall assume the costs of such preparation." Reg. § 160-1-3-.04(4)(b). In the instant case, Appellants' attorney requested the Local Superintendent to transcribe and prepare the transcript.

The two methods for preparing a transcript, however, reflect the different circumstances under which a hearing transcript may be prepared. In some instances, a reporter is available to record the hearing. In other instances, however, the local board will prepare its own recording of the hearing. In situations where a reporter records the hearing, the appealing party can directly contact the reporter and request a copy of the transcript. When the local board makes a recording, the appealing party has to ask the local superintendent to have a transcript prepared because the recording is in the possession of either the local board or the local superintendent.

While Appellants claim that requiring them to make an advance deposit places a burden upon them that is not imposed by either statute or regulation, we do not interpret either O.C.G.A. § 20-2-1160 or Reg. § 160-1-3-.04 as imposing any burden upon the local boards of education to initially advance the costs of the transcript, nor does it impose any burden upon Appellants since they have to pay the costs in any event. The statute requires the appealing party to file the transcript with the appeal, and the regulation requires the appealing party to assume the costs of preparing the transcript, whether it is prepared by an independent reporter or by employees of the local board, neither of which require the local board to make any advance payment of the transcript costs (except in the expenditure of employee time).

However, because we have never issued an interpretation of our regulation before now, we will permit Appellants in the instant case to go forward with their appeal and we will only apply our interpretation prospectively. Appellants tendered a check for the transcript costs during oral argument. If Appellants deposit the check with the reporter and have a transcript given to the

Local Superintendent, the Local Superintendent can certify the record to the State Board of Education.

Based upon the foregoing, we direct the Local Board to process the appeal upon receipt of a transcript that has been paid for by Appellants.

SO ORDERED, this 9th day of September, 1993.

Mrs. King, Mr. Sears, Mr. Shurbutt and Dr. Thomas were not present.

Robert M. Brinson
Vice Chairman for Appeals