

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>J. M. S.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 1999-52</b>
	:	
<b>MADISON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by J. M. S. (Student) from a decision by the Madison County Board of Education (Local Board) to deny him credits for the last semester of the 1998-1999 school year because of excessive absences. The Student contends that the Local Board's policy and decision violates the policy of the State Board of Education regarding absences because it establishes requirements beyond the State Board of Education policy. The Local Board's decision is reversed.

During the second semester of the 1998-1999 school year, the Student, a tenth grader, was absent for 32.75 days but he made up all of the lessons and was able to pass all of his courses. The Local Board claims that 16 of the absences were unexcused. The Local Board has an attendance policy that provides that students will not receive credit for a course if they are absent more than 10 days during a semester unless they attend a Saturday class, making up one hour for each hour of class missed, and make up their work. The student handbook also informs the students that they can make up work only for excused absences. The Student did not attend the Saturday classes and the school administration informed him that he would not receive credit for any of the courses he took during the second semester of the 1998-1999 school year. The Student appealed to the Local Board and argued that he had made up all of his classes, received passing grades, and, because the student handbook only permits work to be made up for excused classes, his absences were excused. The Student then argued that the denial of his credits violated the State Board of Education policy concerning absences because the Local Board's policy imposes an unauthorized condition on his receipt of grades. The Local Board voted against granting the Student any credit and he filed a timely appeal to the State Board of Education.

State Board of Education Rule 160-5-1-.10, effective April 9, 1997, provides that local boards of education have to adopt policies providing for excuses from school under certain circumstances, and that students' grades should not be penalized because of absences if the absences are justified and validated for excusable reasons, the work is made up, and the student maintains a 70 grade average. In *A. B. v. Bibb Cnty. Bd. of*

*Educ.*, Case No. 1998-40 (Ga. SBE, Nov. 18, 1998), the State Board of Education held that an attendance policy that required Saturday make-up classes imposed an additional burden on students that was not contemplated by Rule 160-5-1-.10. The Student claims that the same situation obtains in the instant case, i.e., the Local Board's attendance policy is void because it imposes a Saturday-class burden on students that is not permitted by state policy. We agree.

The only reason the Student has not been granted his grades is because he did not attend the Saturday classes. The Local Board claims that 16 of the Student's absences were unexcused, which places him outside the State Board of Education policy because it applies only when absences are excused. The Local Board, however, is estopped to claim that the Student's absences were not excused. The Local Board has a policy that says a student cannot make up work for unexcused absences. In view of this policy, the Student's absences must be deemed excused because he was permitted to make up all of his work.

The Local Board claims that it permitted students to make up their work because of the administrative burden of verifying whether an absence is excusable. We believe this argument is irrelevant. The Student and his parents relied on the acceptance of the makeup work, to his detriment, as evidence he had completed all that was necessary to obtain his grades. In another semester, the Student received his grades under similar circumstances, but he attended the Saturday classes. During the semester in question, however, the Student was attending extra classes as part of an individualized educational program prepared under IDEA<sup>1</sup>, which he believed took the place of the Saturday classes. From the record, it appears that if the Student had attended the Saturday classes, he would have been granted his grades, regardless of any administrative burden perceived by the Local Board.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision violated the State Board of Education's absence policy and was arbitrary and capricious. Accordingly, the Local Board's decision is REVERSED.

This \_\_\_\_\_ day of December 1999.

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Bruce Jackson  
Vice Chairman for Appeals

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<sup>1</sup> Individuals With Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.*