

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JACK S.,	:	
	:	
Appellant,	:	
vs.	:	
	:	
DEKALB COUNTY BOARD	:	CASE NO. 1991-10
OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Jack S. (“Student”) from a DeKalb County Board of Education (“Local Board”) decision to uphold a student evidentiary committee decision that he was guilty of possessing cigarettes on campus, being disrespectful towards a teacher, and violating probation. The Local Board also modified the decision of the Student Disciplinary Tribunal. The Local Board’s decision is sustained.

On December 11, 1990, a teacher observed the Student smoking on campus. The Student had previously been disciplined three times for smoking and was on probation in accordance with the student rules of the Local Board. The teacher reported the incident to the principal. The principal investigated the incident and suspended the Student for ten days. The principal also referred the matter to a student evidentiary committee for a hearing because it was the Student’s fourth offense. The Student was charged with (1) possession of tobacco on campus; (2) violation of probation; and (3) rude, disrespectful behavior.

A hearing was conducted on January 15, 1991, before the Student Evidentiary Committee. The teacher testified that he observed the Student and another student smoking cigarettes outside the teacher’s classroom. The Student testified that he was not smoking, but was merely acting as a lookout for the other student. There was no evidence presented that the Student was disrespectful towards a teacher.¹

The Student Evidentiary Committee found the Student guilty on all charges and assigned him to Open Campus for the remainder of his high school career with probation for the remainder of the 1990-1991 school year. The Student then appealed to the Local Board.

The Local Board met in executive session on February 11, 1991, without notifying the Student or his parents that the matter would be considered. The Local Board affirmed the

¹ There was un rebutted testimony during the hearing that the charge of disrespect had been dropped and there were no school witnesses who testified concerning the disrespect charge.

findings of the Student Evidentiary Committee, but changed the decision to require the Student to attend the Alternative School for the remainder of the 1990-1991 school year with enrollment at Open Campus High School or return to his regular high school for the 1991-1992 school year, at his option, and probation during the remainder of his high school career. The Student then appealed to the State Board of Education.

On appeal, the Student claims that the Local Board's decision was erroneous because: (1) he was misled concerning the charges and the attendance of witnesses; (2) he was not notified that the Local Board would consider his case and the Local Board imposed a more severe punishment than the Student Evidentiary Committee by moving him from Open Campus to the Alternative School;² (3) a teacher would not testify on his behalf; and (4) he was not notified by the Local Board that he had a right to appeal to the State Board of Education. The Local Board counters by arguing that: (1) the Student did not request a subpoena even though he was informed of his right to subpoena witnesses; (2) the teacher's testimony was unnecessary and would have been cumulative; (3) the Local Board had the right to impose a more severe punishment; and (4) the Student was not harmed by the failure to notify him that he had a right to appeal to the State Board of Education.

The State Board of Education follows the rule that if there is any evidence to support the decision of a local board then the decision will be upheld unless it violates the law or constitutes an abuse of discretion. See, Ransum v. Chattooga Cnty. Ed. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Ed. of Educ., Case No. 1976-11 (St. Bd. of Ed., Sep. 8, 1976). Additionally, the State Board of Education is an appellate review body and is, therefore, confined to the evidence presented in the record.

In the instant case, there was testimony that the Student was observed smoking on the campus. While the Student contested this testimony, the Student Evidentiary Committee was free to accept either the teacher's testimony or the Student's testimony. We, therefore, conclude that there was evidence to support the charges that the Student possessed tobacco on campus and violated his probation.

The record, however, does not contain any evidence to support the charge that the Student was rude and disrespectful towards a teacher. There was some uncorroborated hearsay testimony that the Student was disrespectful towards a teacher. There was also testimony that the Student became angry and upset when he was informed that he was going to be suspended, which the Student admitted. The school system, however, did not proffer any evidence that the Student's anger was directed towards a teacher, or that he showed disrespect in any way. We, therefore, conclude that the Student Evidentiary Committee improperly found the Student guilty of the charge of being rude and disrespectful.

² There was no evidence presented concerning the differences between the two assignments. Apparently, the Alternative School is typically the assignment of choice for behavioral problems, whereas Open Campus is normally used to provide an education for students in non-traditional circumstances. The difference in the severity of the two assignments may only be a perceived difference, but the Local Board did not argue against the Student's allegations that the Alternative School assignment was a more severe punishment.

The Local Board argues that the charges of tobacco usage and probation violation were supported by the evidence and are sufficient to uphold its decision. The question is whether the Student Evidentiary Committee would have imposed the punishment it did in the absence of the rude and disrespectful charge. We cannot say that the same decision would not have been reached. The Student was on probation because of previous smoking incidents. The Committee's decision was a reasonable next step in a program of progressive discipline. Thus, we conclude that the Student Evidentiary Committee did not err by failing to dismiss the rude and disrespectful charge, or by finding the Student guilty of the charge. Under the circumstances, it appears that the Committee would have reached the same result, i.e., it would have imposed the same discipline if the charge of being rude and disrespectful had not been present.

The Student was notified that he had the right to have subpoenas issued for the attendance of witnesses, but there is no indication that the Student requested subpoenas. The record shows that the Student merely asked whether the other student and the teacher who observed the disrespect would be available. In the absence of a subpoena, the school system was not obligated to have any witnesses present. The Student, therefore, cannot complain about the absence of any witnesses.

The Student also was not harmed by the failure of the Local Board to notify him of his right to appeal to the State Board of Education. His appeal was filed in a timely manner and the lack of notice did not result in any delay. We, therefore, conclude that the Local Board's failure to notify the Student of his right to appeal when the failure did not result in any delay will not provide any basis for reversing the Local Board's decision.

Finally, the Student complains that the Local Board erred by imposing a harsher punishment than was imposed by the Student Evidentiary Committee because the Local Board consigned him to the Alternative School rather than Open Campus. The Local Board argues that O.C.G.A. Sec. 20-2-754(c) permits it to "take any action it determines appropriate," and that this section permits it to change the discipline imposed by the Student Evidentiary Committee.

Regardless of whether the Alternative School is a harsher punishment than Open Campus, the Local Board's decision concerning the Alternative School is now a moot issue since the 1990-1991 school year has ended. The remainder of the Local Board's decision cannot be deemed to be harsher than the Student Evidentiary Committee's decision since under the Local Board's decision, the Student has the opportunity to return to his regular high school at the beginning of the next school year, whereas he would have had to attend the Open Campus School for the remainder of his school career under the Student Evidentiary Committee's decision. Furthermore, the Local Board did not exceed its authority by imposing probation during the remainder of the Student's high school career.

Based upon the foregoing, the Local Board's decision to uphold the Student Evidentiary Committee is, therefore,

SUSTAINED.

This 13th day of June, 1991.

Larry A. Foster
Vice Chairman for Appeals