

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JASON B.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1994-49
vs.	:	
	:	DECISION
THOMASTON-UPSON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Jason B. (Student) from a decision by the Thomaston-Upson County Board of Education (Local Board) not to permit him to make up the examinations he missed during a ten-day suspension, nor to permit him to take an equivalency examination for the course work and examinations missed during the suspension. The Local Superintendent suspended the Student for ten days because he participated in drinking alcohol on a school trip. The Student claims the Local Board denied him due process. Additionally, the Student claims that the appeal is not moot because he received zero grades on several tests that were given during the suspension period. The Local Board claims it did not deny the Student due process and that the appeal is moot. The Local Board's decision is sustained.

The Student, who was a junior and academically rated number one in his class, accompanied a group of eleven students to Huntsville, Alabama, on February 17, 1994, on a school-sponsored trip. During the evening hours, some of the group obtained and consumed some beer and whiskey. The Student claims that he tasted the beer, but did not consume any of it because he did not like the taste.

When the group returned to school, the Student's father reported the drinking incident to the Student's principal. The principal investigated and decided to suspend for five days the students who drank the beer and whiskey. When the Local Superintendent learned about the suspensions, he increased the suspensions from five days to ten days to comply with the Local Board's student disciplinary policy.

The Local Board reviewed the Local Superintendent's decision at a meeting where the students involved and the principal spoke. The Local Board decided not to rescind the Local Superintendent's decision. The Student and his parents, however, did not attend the meeting of the Local Board.

Because of his absence from the Local Board meeting, the Student asked for a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-1160, which the Local Board granted. At the beginning of the hearing, the Student requested sequestration of the witnesses, but the Local Board denied the request. The Local Superintendent did not present any witnesses; the only witnesses who testified were called by the Student.

After the hearing was over, the Local Board voted against permitting the Student to make up the tests he missed or permitting him to take an equivalency examination in the courses where he missed tests during his suspension period. The Student then appealed to the State Board of Education.

On appeal to the State Board of Education, the Student claims that the Local Board denied him due process by: not making any charges against him at the hearing; not sequestering the witnesses; not presenting any evidence to sustain his suspension, and not giving him notice prior to his suspension. The Student also claims that the appeal is not moot because his grades were adversely affected by the ten-day suspension. The Local Board claims that the Student was provided with due process and the appeal is moot because the suspension period has passed.

“Goss v. Lopez, 419 U.S. 565, 581, (95 SC 729, 42 LE2d 725) [1975], sets forth the principles relative to a student’s constitutional rights: ‘Students facing temporary suspension have interests qualifying for protection of the due process clause and due process requires, in connection with a suspension of ten days or less, that the student be given oral or written notice of the charges against him and, if he denies them, an explanation of the evidence the authorities have and an opportunity to present his side of the story. The clause requires at least these rudimentary precautions against unfair or mistaken findings of misconduct and arbitrary exclusion from school.’” Dillard v. Fussell, 160 Ga. App. 382, 287 SE2d 96 (1981).

Neither the Local Board nor the Local Superintendent, therefore, were required to provide the Student with a hearing before the suspension was imposed. There was no requirement for the Local Board to bring any charges against the Student because the Student had been charged by the principal, had admitted he at least tasted the alcohol, and had already served his period of suspension. The only issue before the Local Board was whether to permit the Student to make up the tests he missed during his suspension period, or whether to permit him to take an equivalency examination for the courses in which he missed tests during his suspension period. We, therefore, conclude that the Local Board did not deny the Student due process because charges were not made before the hearing conducted under O.C.G.A. § 20-2-1160 was held, nor was due process denied to the Student because the Local Superintendent did not present any evidence at the hearing.

O.C.G.A. § 24-9-61 permits a party to request the sequestration of the witnesses of the other party; it does not address sequestration of a party’s own witnesses. In this case, the Local Superintendent did not present any witnesses. The Local Board, therefore, did not deny the Student any due process by not ordering the sequestration of his own witnesses.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student due process and that its decision was within its power and authority. The Local Board’s decision, therefore, is
SUSTAINED.

This 10th day of November, 1994.

Mr. Sessoms was not present.

Robert M. Brinson
Vice Chairman for Appeals