

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOSHUA B.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1995-23
vs.	:	
	:	DECISION
CLAYTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Joshua B. (Student) from a decision by the Clayton County Board of Education (Local Board) to affirm the decision of a Student Disciplinary Tribunal to permanently expel him, with the opportunity to apply for alternative school, because he was involved in a fight with another student. The Student claims he was denied due process, the evidence was insufficient to support the charges, and the punishment was too harsh. The Local Board's decision is sustained.

On January 27, 1995, the Student, an eleventh grader at Jonesboro High School, was present at a fight that took place between two other students. Witnesses testified that they saw the Student kick one of the students several times while the two fighting students were on the ground. There were other witnesses who testified that the Student did not kick anyone during the fight.

During the hearing before the Student Disciplinary Tribunal, the student witnesses for the school system were permitted to read their written statements to the Tribunal before they testified. The Student objected to the readings, but the objection was denied. Even though the Student had an opportunity to cross-examine the student witnesses, he claims that the reading of the statements prejudiced the Tribunal and thus denied him procedural due process. The Student's argument, however, is not supported by case law. Even in a criminal trial, if a "witness is present at trial, under oath, and subject to cross-examination, the prior consistent out-of-court statement of the witness is admissible." Edwards v. State, 255 Ga. 149, 151, 335 S.E.2d 869 (1985). Thus, if such statements are admissible in a criminal proceeding, then they certainly are admissible in an administrative proceeding. We, therefore, conclude that the Student was not denied procedural due process because the student witnesses were permitted to read their statements to the Tribunal.

The Student also claims that the evidence was insufficient to support the charge. "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, there was testimony that the Student kicked one of the fighting students several times while the student was on the

ground. It was the duty of the Tribunal to decide between this testimony and the inconsistent testimony given by other student witnesses who said that the Student was not involved. We, therefore, conclude that there was evidence that supports the Local Board's decision.

Finally, the Student claims that the punishment was too harsh. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. See, Boney v. County Board of Education of Telfair County, 203 Ga. 152 (1947); Braceley. Burke County Bd. of Ed., Case No. 1978-7." Joseph M. v. Jasper Cnty. Bd. of Educ., Case No. 1981-40 (Ga. SBE, Feb. 11, 1982). The discipline imposed by the Local Board was within its authority. O.C.G.A. § 20-2-755.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student procedural due process, there was evidence to support the decision, and the Local Board acted within its statutory authority. The Local Board's decision, therefore, is
SUSTAINED.

This 10th day of August, 1995.

Messrs. Sessoms, Teasley and Williams were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals