

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHERRY B.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1995-41
vs.	:	
	:	DECISION
DEKALB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Sheny B. (Student) from a decision by the DeKalb County Board of Education (Local Board) to uphold the decision of a Disciplinary Tribunal to suspend her from school during the fall quarter of the 1995-1996 school year, with the option of attending an alternative school during the suspension, after finding her guilty of skipping school and being involved in a burglary. The Student claims she was denied procedural due process in the hearing before the Tribunal and that the notice of charges was defective. The Local Board's decision is reversed.

The Student was charged with skipping school on May 22, 1995, with four other students, entering a dwelling, and stealing several items, including a knife and two guns. The notice of charges, however, only stated that the Student had violated the Local Board's Rule 17 of student conduct.

The Disciplinary Tribunal held a hearing on June 19, 1995. The only evidence presented at the hearing was the hearsay testimony of an assistant principal from the Student's high school. At the conclusion of the hearing, the Disciplinary Tribunal found the Student guilty of violating the Local Board's rules 10 and 17. On July 10, 1995, the Local Board upheld the Tribunal's decision. The Student then appealed to the State Board of Education.

The Student claims on appeal that she was denied procedural due process because the notice given to her did not provide any information concerning the actions that constituted a violation of Rule 17 of the Local Board's code of student conduct. Rule 17 prohibits:

CONDUCT OUTSIDE OF SCHOOL HOURS OR AWAY FROM SCHOOL

Any conduct outside of school hours or away from school which may adversely affect the educational process or endanger the health, safety, morals, or well-being of other students, teachers, or employees within the school system.

When a student is charged with some violation that can result in suspension from school, the student has to be given sufficient information to permit the student to defend against the charges. *See, Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993). The argument is sometimes made that it is unnecessary to give the student the details of the actions that constitute a violation of a rule because the student knows what they did to constitute a violation. This argument, however, fails to recognize that the purpose of the rule is not to protect those who in fact violate the rules, but to protect those who have not violated the rules.

In this case, the notice given to the Student's parents stated, "The purpose of the hearing is to receive and evaluate testimony and other evidence concerning the charge(s) against your child

Charge(s): Offense No.

10- SKIPPING CLASS

17- CONDUCT OUTSIDE OF SCHOOL HOURS"

Notice, dated June 1, 1995. The notice did not provide any other information concerning the date the infraction occurred, or what actions constituted an infraction. The language of Rule 17 is so broad that it can cover any number of actions. As a result, there has to be some particularity in specifying what action constitutes an infraction. The Local Board argues that there were numerous meetings and other letters to the Student and the Student's parents that permitted them to know the substance of the charges sufficiently to allow the Student to defend against them. The record, however, does not contain any evidence concerning such meetings or correspondence. There is a reference to some proceeding that took place before the hearing before the Disciplinary Tribunal, but there is nothing to show what was disclosed during the proceeding.¹ Since the required particularity is missing in this case, the State Board of Education concludes that the notice was deficient.

The Student also claims that the evidence presented did not support the Disciplinary Tribunal's decision. The record shows that the only evidence presented against the Student consisted of the testimony of an assistant principal, who related what others said and did. The assistant principal also testified that the Student admitted to violating Rule 17. When the Student's father attempted to object to the hearsay testimony, the chairperson of the Disciplinary Tribunal told him that he could not object.

Hearsay testimony is admissible in administrative hearings, but a decision cannot rest upon hearsay testimony alone. *See, Finch v. Caldwell*, 155 Ga. App. 813, 273 S.E.2d 216 (1980). The Local Board argues that the assistant principal's testimony concerning the Student's

¹ The Student raised several issues concerning the conduct of the initial proceeding. The Local Board argues in its brief that nothing that occurred in the prior proceeding is relevant to what occurred at the Disciplinary Tribunal hearing. The Local Board thus wants to exclude any reference to the prior proceeding by the Student, but wants to make reference to the prior proceeding for purposes of bolstering its arguments. The Local Board cannot have it both ways.

admission of guilt is an exception to the hearsay rule. The record, however, does not show that the assistant principal heard an admission from the Student, or was merely relating what someone reported to him. The State Board of Education, therefore, concludes that the assistant principal's testimony did not fit within the exception to the hearsay rule. The State Board of Education further concludes that since the only evidence presented against the Student was hearsay evidence, there was insufficient evidence to find that the Student violated the Local Board's Rule 17.

The remaining exceptions made by the Student rest on the Student's misconception that all of the rights accorded to a criminal defendant are available to a student in an administrative proceeding and are without merit.

Based upon the foregoing, the State Board of Education is of the opinion that the Student's due process rights were violated and that there was insufficient evidence to find that the Student violated any of the Local Board's rules. The Local Board's decision, therefore, is hereby
REVERSED.

This 9th day of November, 1995.

Mr. Brinson, Ms. Keeton, Mr. Sessoms and Mr. Williams were not present. The seat for the Tenth District is vacant.

Richard C. Owens, Chairman
State Board of Education