

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

H.L.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-53
	:	
HENRY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by H.L. (“Student”) from a decision by the Henry County Board of Education (“Local Board”) expelling the Student from school from December 1, 2009 until the end of the 2009-2010 school year, with the option to enroll in the alternative school. The Local Board took these actions because it found that the Student violated the Local Board’s rules by verbally abusing other students, using profane and vulgar language, inappropriate physical contact, and engaging in behavior detrimental to learning. For the reasons set forth below, this appeal is sustained because the record contains evidence supporting the decision of the Local Board.

I. BACKGROUND

The Student attended Henry County Middle School. On or about November 17, 2009, the school administration was informed by a parent that a student was being harassed and subjected to racial and derogatory slurs by the Student. The school administration investigated the allegations and found that the Student had made demeaning, vulgar, and derogatory slurs to the first student and three other students. On November 17, 2009, the Local Board sent the Student a charge letter notifying him of his suspension and disciplinary hearing for verbally abusing other students, using profane and vulgar language, inappropriate physical contact, and engaging in behavior detrimental to learning. The Student requested a hearing and the Local Board convened a hearing.

At the hearing, one student testified that the Student made degrading statements to her by calling her a “fat hoe,” “fat ass,” and telling her that she was ugly and pregnant. She further testified that the Student made racially derogatory statements such as “all black women are single and have baby daddies.” Another student testified the Student called her a “fat ass,” and said “she’s fat as hell.” A third student testified that the Student called her a “nigger” on a regular basis, stated “blacks stepped out [of] the toaster on high heat,” made comments accusing them of stinking, and that he hit her. A fourth student testified that the Student called her a “fat ass,” “bitch,” “jackass,” and that he often called her “ugly” and “stupid.”

The Student attended the hearing, along with his aunt and uncle. The hearing officer confirmed that the Student and his aunt and uncle understood the right to have an attorney, call witnesses, and cross examine witnesses. The Student acknowledged understanding his rights and did not object to the scheduled hearing or request a continuance. After hearing all the evidence, the hearing officer found that the Student's conduct violated the Local Board's rules. The hearing officer recommended expelling the Student from school for the remainder of the 2009-2010 school year, with the option to enroll in the alternative school. The Local Board affirmed the decision of the hearing officer. The Student has appealed the Local Board's decision to this Board, and contends that his due process rights were violated.¹

II. ERROR ASSERTED ON APPEAL

A. Due Process.

The Student asserts that his due process rights were violated because his parents were indigent at the time of the hearing and could not attend the hearing, and could not retain legal counsel. The Student further contends that his aunt and uncle were not able to obtain records or information from the Local Board prior to the hearing. As an initial matter, none of these issues were raised before the hearing officer, and, therefore, these issues cannot be raised on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983).

Furthermore, the Student's due process rights were not violated under Goss v. Lopez, 419 U.S. 565; 95 S. Ct. 729 (1975), as asserted by the Student. "The essential requirements of due process are notice and an opportunity to respond." Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 105 S. Ct. 1487 (1985). The Student was provided notice of the charges and an opportunity to be heard. The Student attended the hearing, along with his aunt and uncle. The hearing officer confirmed that the Student and his aunt and uncle understood the right to have an attorney, call witnesses, and cross examine witnesses. The Student acknowledged understanding his rights and did not object to the scheduled hearing or request a continuance. Thus, the Student's due process rights were not violated. See Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE Sept. 1988).

¹ The Local Board contends that this appeal should be dismissed on the grounds that the Student failed to file a brief or request oral argument. See Chris M. v. McIntosh County Bd. of Educ., Case No. 1995-47 (Ga. SBE, Jan. 11, 1996). However, the Student did file a brief, but it appears that the Student did not serve the brief on counsel for the Local Board. Therefore, the State Board does not consider this appeal abandoned. Moreover, the State Board is affirming the decision of the Local Board, and, therefore, the lack of service by the Student of his brief on counsel for the Local Board does not prejudice the Local Board.

B. Record Evidence.

The Student contends that the decision is not supported by the evidence. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student was charged with verbally abusing other students, using profane and vulgar language, inappropriate physical contact, and engaging in behavior detrimental to learning. The record evidence shows that the Student made degrading statements to other students, such as calling students a “fat hoe,” “fat ass,” saying “she’s fat as hell,” “bitch,” and a “jackass.” The Student called a student a “nigger” on a regular basis and told students that they were “ugly” and “stupid.” The Student made racially derogatory statements such as “all black women are single and have baby daddies,” and that “blacks stepped out [of] the toaster on high heat.” The Student made comments accusing black students of stinking, and hitting one student. Thus, the record contains a plethora of evidence supporting the decision of the Local Board.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of April 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS