

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. M. L.,	:	
	:	
Appellant,	:	CASE NO. 2010-59
	:	
vs.	:	
	:	
HOUSTON COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by C. M. L. (Student) from a decision by the Houston County Board of Education (Local Board) to expel him “from regular school for the remainder of the 2009-2010 school year with the option of attending an alternative school during the 2010-2011 school year” after a student disciplinary tribunal found him guilty of fighting, not following directions, and creating a disruption in the school. The Student claims that there was no evidence to support the charges, he acted in self-defense, and he was denied due process because the Local Board arbitrarily increased his punishment. For the reasons set forth below, the Local Board’s decision is REMANDED for the Local Board to enter a new decision.

On December 4, 2009, several individuals from another school invaded the Student’s school and chased him to the central office area and began beating on him. The incident was captured on a video surveillance camera. Teachers broke up the fight and the Student went into the main office. He then exited the main office and was confronted by an assistant principal, who led him back into the main office where he remained until the police arrived and took him to the police station. The school system charged the Student with fighting, failure to obey instructions from a teacher, and causing a disruption in the school.

The student disciplinary tribunal found the Student guilty of fighting, not following directions, and creating a disruption in the school and expelled the Student for the remainder of the 2009-2010 school year. The tribunal gave the Student the option of attending an alternative school during the expulsion period. When the Student appealed to the Local Board, the Local Board increased the punishment to expulsion “from regular school for the remainder of the 2009-2010 school year with the option of attending an alternative school beginning with the 2010-2011 school year.”

The Student claims that the Local Board’s decision was arbitrary and capricious and he was denied due process because the Local Board increased his punishment without explanation. The State Board of Education has consistently held that a local board of education cannot increase a student's punishment when a student appeals the decision of the tribunal without an explanation. "If an individual will receive additional

punishment because of an appeal, then the right of appeal effectively does not exist." *Jack S. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1991-10 (Ga. SBE, June 13, 1991)." A local board of education cannot impose a more severe punishment in the absence of an explanation for the harsher punishment." *Chauncey Z. v. Cobb Cnty. Bd. of Educ.*, Case No. 1992-42 (Ga. SBE, Mar. 11, 1993). *See also, Ryan B. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1995-24 (Ga. SBE, Aug. 10, 1995). The reason for the rule is that the possibility of vindictiveness is too great if there is not some reason given that can be reviewed. *See, Georgia Real Estate Commission, et al. v. Horne*, 141 Ga. App. 226, 232, 233 S.E.2d 16, 20 (1977). The Local Board failed to follow this precedent by not providing the reasons for why it increased the Student's punishment.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board improperly increased the punishment of the Student without explanation. Accordingly, without reaching the merits of the other issues raised, the Local Board's decision is remanded with direction that the Local Board enter a new decision and, should it ultimately decide to increase the punishment imposed by the disciplinary tribunal, that it clearly set out adequate reasons for the increased punishment.

This the _____ day of July, 2010.

MARY SUE MURRAY
Vice Chair for Appeals