

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. J.,	:	
	:	
Appellant,	:	CASE NO. 2011-44
	:	
vs.	:	
	:	
BIBB COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by C. J. (Student) from a decision by the Bibb County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the 2010-2011 school year after finding him guilty of threatening a teacher. The Student claims that the hearing officer's decision was arbitrary and capricious in that school policy was not followed and he should have been given the opportunity to go to an alternative school. Additionally, the Student claims that he was deprived of the right to have counsel at his hearing. The Local Board's decision is SUSTAINED.

At a student disciplinary hearing held on October 29, 2010, a hearing officer found the Student guilty of threatening a teacher and expelled him for the remainder of the 2010-2011 school year without the option of attending an alternative school. The record shows that the Student had been involved with disciplinary tribunals on three prior occasions, once in each of the three prior school years. The Student appealed to the Local Board.

The Local Board scheduled a meeting for November 17, 2010, to consider the appeal. The Student requested a continuance because the transcript was unavailable to the Student's attorney until the day before the meeting, which the Local Board granted.

On or about November 19, 2010, the Local Board rescheduled a meeting for 5:30 p.m. on November 29, 2010. On November 23, 2010, the Student's attorney submitted a motion for another continuance because she was going to be absent from the state and was not scheduled to return to Atlanta until the afternoon of November 29, 2010, and it was questionable whether she would be able to make the meeting by 5:30 p.m.¹

¹ In the motion, the Student's attorney states that she had informed the Local Board's attorney on November 16, 2010, during a telephone conference regarding the first request for a continuance, that she would be out of town and would not return until the afternoon of November 29, 2010. The Local Board's attorney contends he was

The Local Board met at 5:30 p.m. on November 29, 2010, without the Student or the Student's attorney being present. The Local Board voted to deny the Student's motion for a continuance and proceeded to uphold the decision of the disciplinary tribunal hearing officer. The Student then filed an appeal to the State Board of Education.

The Student claims that the tribunal hearing officer's decision to expel him without the opportunity to attend an alternative school was an abuse of discretion because it 1) was contrary to the recommendation of the Student's principal, and 2) was contrary to the student handbook, which provides for expulsion if a student has had three disciplinary hearings over two consecutive years.

There is no requirement in law, either statutory or case, that says a hearing tribunal has to follow the recommendation of a school official. Although it is a stated policy that students should be assigned to alternative schools rather than expelled completely, the policy also does not mandate an assignment to alternative school in all instances.

While the student handbook provides for expulsion without the option of attending an alternative school if a student has had three disciplinary hearings within a two year period, it does not prevent a student from being expelled under other circumstances, e. g., when a student has less than three disciplinary hearings. In the instant case, the Student had previously been assigned to alternative school. The tribunal hearing officer could have determined from the record that further assignment to alternative school was futile. The State Board of Education concludes that the tribunal hearing officer had the authority to expel the Student from all instruction and did not abuse his authority by so deciding.

The Student claims that the Local Board violated the provisions of O.C.G.A. § 20-2-754(d) by failing to grant a continuance because of the absence of his attorney. O.C.G.A. § 20-2-754(d) provides for an appeal of a disciplinary tribunal decision to a local board of education and further provides:

The board may take any action it determines appropriate, and any decision of the board shall be final. All parties shall have the right to be represented by legal counsel at any such appeal and during all subsequent proceedings.

O.C.G.A. § 20-2-754(d) (LexisNexis, 2010).

The Local Board argues that it did not deny the Student his right to be represented by legal counsel, but that the Student, and his attorney, voluntarily chose not to attend the hearing before the Local Board, that the attorney could have travelled from the airport in

unaware of the Student's attorney's travel plans until after the November 29, 2010, date was selected, which occurred on November 19, 2010.

Atlanta to Macon in time to make the hearing, and another attorney could have attended the hearing.

The granting of a continuance is within the sound discretion of the local board. *See, e.g., Opatut v. Guest Pond Club*, 188 Ga. App. 478, 373 S.E.2d 372 (1988)(continuances because of absence of counsel are not favored). The Student's attorney could have argued the policy issue before the Local Board and the argument regarding expulsion in the absence of three disciplinary hearings within two consecutive years, but these arguments had been made before the tribunal hearing officer. There was no new evidence to be presented and the Local Board reviewed the record of the tribunal hearing where the arguments were made. It does not, therefore, appear that the Student was harmed by his absence or the absence of his attorney from the Local Board's meeting. The State Board of Education, therefore, concludes that it was not an abuse of discretion for the Local Board to deny the Student's motion for a continuance.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and that neither the tribunal hearing officer's decision nor the Local Board's decision was an abuse of discretion. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of April 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS