STATE BOARD OF EDUCATION

STATE OF GEORGIA

LEVIS LEE, Appellant, v. CHARLTON COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1980-14

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Charlton County Board of Education herein appealed from is hereby affirmed.

Mr. McClung and Mr. Smith were not present.

This 14th day of August, 1980.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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LEVIS LEE, Appellant, vs. CHARLTON COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1980-14 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Levis Lee (hereinafter "Appellant") from a decision by the Charlton County Board of Education (hereinafter "Local Board") to suspend him for the remainder of the 1979-1980 school year. The appeal was made because of Appellant's assertion that the decision was arbitrary, malicious, and discriminatory. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On March 15, 1980, the Local Board issued a written notice to Appellant's parents charging Appellant,

an eleventh grade student, with violation of the conduct and behavior code of the school system by using profane and threatening language in a classroom on March 7, 1980. The notice also contained the hearing date, a list of witnesses, and stated that counsel could appear on behalf of Appellant. The Hearing was conducted on March 19, 1980 before a hearing officer appointed by the Local Board.

The hearing officer recommended to the Local Board that Appellant be suspended for the remainder of the 1979-1980 school term. At its April 8, 1980 meeting, the Local Board heard additional testimony and arguments from counsel. A decision was made by the Local Board at the conclusion of the meeting to expel appellant for the remainder of the 1979-1980 school term. Appellant appealed the Local Board decision to the State Board of Education on May 8, 1980.

The hearing officer for the Local Board found that Appellant's parents had notice of the hearing on March 15, 1980. He also found that Appellant directed profane and threatening language toward his teacher on March 7, 1980. The teacher considered the language to be a threat against him. The hearing officer also found that Appellant's offense constituted his fourth major offense, as defined by the school's conduct and behavior code, during the school term.

The record shows that Appellant's March 7, 1980 actions were related to disciplinary measures taken by the principal on the previous day when Appellant created a disturbance in the classroom and was assigned to the "alternative" school. Three other students in the same classroom, all football players, were involved in an unrelated classroom disturbance on the same day, but the teacher sent them to the football coach for discipline rather than to the principal. The teacher was honoring a request made to him by the football coach. It was established during the hearing that the procedure of sending the football players to the coach was done without the knowledge or consent of the principal and resulted in the subsequent counselling of the teacher by the principal.

Appellant felt the teacher had discriminated against him because the football players were sent to the coach while he was assigned to the alternative school. The next day, March 7, 1980, instead of reporting to the alternative classroom, Appellant entered the classroom in which he had created the previous day's disturbance while it was in session. He approached the teacher and threatened him with bodily harm. Appellant then left the classroom without any other incident.

Two days prior to the hearing, Appellant's counsel requested a delay in the proceedings in order to enable him to more adequately prepare. The hearing was opened as

scheduled and the request for a delay was renewed. The hearing officer denied the request because of his determination that Appellant's parents were made aware of the hearing on March 15, 1980 and counsel was engaged on March 17, 1980. Appellant's counsel did not offer to make a showing of any additional evidence he needed or give any reasons to establish that Appellant would be harmed if the hearing was not delayed. The Local Board also received additional testimony from Appellant on April 8, 1980 without Appellant making any offering to show any harm as a result of proceeding with the initial hearing as scheduled.

PART III

CONCLUSIONS OF LAW

Appellant appealed to the State Board of Education on several grounds. The first ground was that the principal and the teacher discriminated against Appellant because he was not an athlete and thus was suspended while the athletes were sent to their coach. The second ground was that Appellant was not given an opportunity to tell the principal his side of the story concerning the initial classroom disturbance. Appellant's third ground was that the written notice of the charges and hearing which was sent to the parents was insufficient. Appellant also urges as a fourth ground that the hearing officer selected by the Local Board

was improperly selected and bias resulted. As a fifth ground, Appellant argues that long-term suspensions are unconstitutional where school officials have failed to utilize or explore readily available, less drastic methods of achieving the legitimate interest of the school. The final ground for appeal urged by Appellant is that the student conduct and behavior code is vague and made available to the students only when they enter the ninth grade.

Appellant's first two grounds for appeal relate to the discipline measures involved as a result of the initial classroom disturbance. Regardless of the fact that Appellant's threats to the teacher resulted from his perception of discrimination, the actions taken by the principal and the teacher in the initial instance do not relate to the disciplinary actions taken with respect to the threats made to the teacher by Appellant. The appeal to the State Board of Education is from a decision made by the Local Board regarding the threats; the Local Board did not make a decision regarding the disciplinary measures or actions taken regarding the initial classroom incident. Since the decision only relates to the threats made by Appellant, the first two grounds raised by Appellant do not form any basis for reversing the decision of the Local Board. The initial actions by the teacher and the principal were only mitigating factors to be considered by the Local Board, but they were not actions taken by nor decisions of

the Local Board and, therefore, are not reviewable by the State Board of Education under the provisions of Ga. Code Ann. §32-910.

Appellant argues that the written notice of the charges was insufficient because it was not received by Appellant's parents until the day before the hearing, the student conduct and behavior code was not attached to the notice, and the notice did not state the specific regulation that had been violated.

The hearing officer found that Appellant's parents were aware of the charges and the hearing five days before the hearing was conducted. The notice contained the statment of the charge of "using profane and threatening language in the classroom...on Friday, March 7, 1980." Additionally, the notice fully apprised Appellant of the witnesses who would testify and the nature of their testimony. Appellant and his parents were, therefore, fully aware of the charges so they could adequately prepare and present a defense at the hearing. The Hearing Officer, therefore concludes that the notice sent to Appellant's parents was sufficient.

Appellant argues that another ground for reversing the Local Board's decision is the fact that the selection of the hearing officer by the Local Board was done in an improper manner and consequently resulted in bias. Appellant also raised this issue before the Local Board. Although the Local Board did not specifically rule on Appellant's

question, the Local Board's decision necessarily establishes that the Local Board decided the issue adversely to Appellant. The basis for Appellant's argument is that the Local Board, by appointing a hearing officer, has adipted the provisions of the Public School Disciplinary Tribunal Act (Ga. Code Ann. §32-855, et seq.) which requires a local board of education to adopt rules and regulations governing the selection of hearing officers, Ga. Code Ann. §32-857. Since the Local Board did not have such rules and regulations in effect, Appellant argues that the selection of the hearing officer was improper and resulted in bias.

The Public School Disciplinary Tribunal Act provides that adoption of its provisions is discretionary with local boards of education. Ga. Code Ann. §32-857 provides:

> "Local boards of education may establish by policy, rule, or regulation disciplinary hearing officers, panels, or tribunals of school officials to impose suspension or expulsion."

There was no evidence presented during the hearing before the hearing office or the Local Board that the provisions of the Act had been adopted. The Act does not provide for any sanctions against a local board of education if it fails to adopt policies, or provide rules and regulations for hearing officers and it appears that the only apparent sanction would be the loss of State provided funds. The

Local Board is charged with the operation and management of the local school system and whether it adopts the Act is entirely within its descretion. The manner in which it seeks out the facts and receives recommendations in disciplinary cases is also within its descretion provided an accused is given the proper procedural safeguards to assure due process. Although a charge of bias has been made in the instant case, Appellant has not shown any specific instance of bias and has not shown that he was denied any of his procedural safeguards. He was given a hearing, the opportunity to present and cross-examine witnesses, and the right to be represented by counsel. The Hearing Officer, therefore, concludes that Appellant's charge of bias is not supported by the record and the Local Board's use of a hearing officer was within its powers to operate and manage the school system.

Appellant has posed a constitutional challenge to the suspension by arguing that long-term suspensions and expulsions from school are unconstitutional where the school officials have failed to utilize other means of discipline. In support of this argument, Appellant cites Shelton v. Tucker, 364 U.S. 479, 488 (1960), Mills v. Board of Education, 348 F. Supp. 866 (D.D.C. 1972), and other cases. The cases cited by Appellant, however, do not establish that long-term suspension or expulsion are unconstitutional. In Shelton, the Court was concerned with whether a state

statute, which required teachers to take certain actions, impinged upon the teacher's right of free association. Justice Stewart observed that legitimate government purposes could not be pursued to the point of broadly stifling fundamental personal liberties when the purpose could be more narrowly achieved. In Mills, the Court was concerned with the lack of services provided to behaviorally disordered children and as part of the court order, the local school system was required to institute due process procedures for the expulsion of students which did not permit expulsion simply because a child was behaviorally disordered. None of the cases cited by Appellant establish any degree of unconstitutionality in expelling students if the student is provided with fundamental due process, regardless of the alternative forms of discipline available to a local board of education. The principle question is whether there is a shocking disparity between the offense and the penalty. See Ingraham v. Wright, 498 F.2d 248, 269 (5th Cir., 1976), rsvd. on other grounds, 430 U.S. 651(1976). Such a shocking disparity is not evident in the instant case where Appellant has threatened a teacher in front of a classroom of other students and other forms of discipline have been attempted. The Hearing Officer, therefore, concludes that the Local Board properly could expel Appellant under the circumstances.

Appellant's final argument is that the Code of Conduct and Behavior is too vague to inform Appellant he

was subject to discipline for threatening a teacher with bodily harm and using profanity within the classroom. Appellant, however, did not attempt to make any showing that he was under any mistaken or misguided impression that he could threaten a teacher with bodily harm and use profanity in the classroom without fear of any form of discipline. The Hearing Officer concludes that Appellant has not shown any harm, even if the Code of Conduct and Behavior is assumed to be vague, and does not, therefore, have any basis for reversing the decision of the Local Board.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Local Board had the power and authority to expel Appellant for the remainder of the school term. The Hearing Officer, therefore, recommends that the decision of the Charlton County Board of Education be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer

Appearances: For appellant Huey W. Spearman and Evelyn Johnson; For Appellee, John B. Adams.