

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SARA M.,

Appellant,

v.

COBB COUNTY BOARD OF EDUCATION

Appellee.

CASE NO. 1983-8

O R D E R

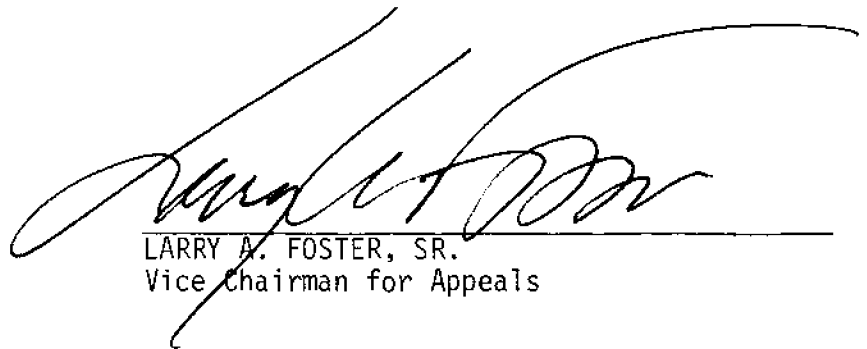
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Cobb County Board of Education herein appealed from is hereby sustained.

Messrs. Temples and Lathem were not present.

This 9th day of June 1983.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: SARA M.,)	
)	
Appellant,)	
)	CASE NO. 1983-8
)	
v.)	
)	
COBB COUNTY BOARD OF EDUCATION,)	REPORT OF
)	HEARING OFFICER
Appellee.)	

This is an appeal by Sara M. (hereinafter "Appellant") from a decision by the Cobb County Board of Education (hereinafter "Local Board") to expel her for the remainder of the first semester of the 1982-1983 school term upon a finding that she had set fire to a student-made mural. The appeal cites several grounds for error in the decision which relate primarily to denial of due process during the principal's investigation of the facts and in the conduct of the hearing. The Local Board argues both that there was not a denial of due process and that the appeal is moot because Appellant could have returned to school at the beginning of the second semester of the 1982-1983 school year. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

Homecoming Day at Wheeler High School is normally a day of celebration. The senior students dress in black and call the

day "Mourning Day" as they mourn the "death" of the opposing team to be played that night. All of the classes build large murals for the game. The murals are made on fifteen foot by twelve foot wooden frames which are covered with chicken wire. Paper napkins and colored tissue paper are then stuffed into the holes of the chicken wire to form pictures and words. The murals are judged and awards given to the class with the best mural.

October 15, 1983, was a very windy day. Each of the classes had finished their murals on the previous days and all of the murals were placed approximately 150-200 feet in front of the school building facing the road for all to see. The senior students, all dressed in black, had an early-morning parade to the school. During the morning hours, the junior class found their mural damaged and they removed it from in front of the school and placed it behind the school for repair. Then, during the lunch hours, the senior class students found their mural lying on the ground and damaged.

Rumors began to fly from student to student. Some said that a group from the opposing team had pushed the mural over, others said that members of the sophomore class were responsible, while still others said that the wind had blown the mural down.

During the fourth period lunch, which began at 12:45 and ended at 1:20 p.m., a group of senior students were at the murals with others of the student population. In all, there were between 25 and 50 students around the murals surveying

the damage to the senior mural and looking at the sophomore mural. The seniors who were present blamed the damage on the sophomores and talk of retaliation began circulating. Suddenly, the sophomore mural burst into flames and, with the wind fanning the fire, the napkins burned completely within minutes.

The Wheeler High School principal was absent when the fire occurred, but upon his return at approximately 1:30 p.m., he began an investigation. An assistant principal had been told immediately following the incident that Appellant was the one who had set the sophomore mural afire. Appellant was called to the office and questioned by the principal, but she denied any involvement. Interviews with other students were conducted during the following week, and on Thursday, October 21, 1983, Appellant was expelled for the remainder of the semester by the principal.

Appellant's parents were notified of the expulsion and given notice of her right to have a hearing on the matter since the expulsion would extend beyond ten days. Appellant requested a hearing and one was held before a Student Disciplinary Committee on November 5, 11, 12 and 22, 1982. The Disciplinary Committee (hereinafter "hearing tribunal") was composed of three administrators from within the Cobb County School System. When the hearing began, Appellant's counsel requested the opportunity to question the members of the panel about their knowledge and involvement with the incident, the witnesses, and Appellant (a "voir dire" examination), but his request was denied.

During the hearing, an assistant superintendent assisted the Local Board's attorney in the presentation of the case. Appellant did not raise any objection to the presence of the assistant superintendent during the course of the hearing. In addition, Appellant did not raise any objection to the Local Board's attorney serving in the dual role of presenting the evidence against Appellant and in acting as legal advisor to the hearing tribunal.

Several students testified that Appellant was present at the sophomore mural immediately before it began burning. Some of them testified they saw her with a lighter in her hand, and overheard her talk about setting the sophomore mural afire. One student testified that she actually saw Appellant light the fire, although at the time the witness did not know Appellant by name and learned her name only after the incident.

Other students, testifying on behalf of Appellant, supported her alibi that she was in the lunchroom before the fire and then went to buy football tickets where she was standing in line when the fire began. After she bought her tickets, she went outside and stood in the parking lot immediately in front of the school building and watched the fire without approaching the murals. Appellant contended that she was, therefore, no closer than 100-200 feet to the murals, and she could not have moved from the murals to the parking lot in the short time that existed from when the fire started and when she was seen in front of the school building in the parking lot. A security officer,

who also testified that he witnessed the wind blow the senior mural to the ground, testified that he did not see anyone running from the scene when the sophomore mural began burning.

The students who testified they saw Appellant at the murals were unable to state how Appellant was dressed, except that she was dressed in black. Appellant, however, and the witnesses who testified on her behalf, claimed she was wearing a pair of distinctive black slacks which had two-foot long zippers down each side.

The hearing tribunal found that the preponderance of the evidence established that Appellant was guilty of starting the fire. They recommended Appellant's expulsion for the remainder of the semester, but, pending appeal, that she be allowed to attend another school within the school system on a probationary basis. The Local Board adopted the recommendation of the tribunal on January 27, 1983. The delay resulted from the inability of the court reporter to provide a transcript any earlier. The appeal to the State Board of Education was filed on February 11, 1983.

PART III

CONCLUSIONS OF LAW

Appellant's appeal claims that she was denied her constitutional due process rights before and during the hearing because:

1. She was interrogated by the principal without having counsel present;
2. She was suspended without any notification and without a hearing in the absence of a showing that she posed a threat of direct or indirect immediate harm;

3. The principal failed to interview witnesses whose names were given to him by Appellant;

4. She was not informed of the basis upon which she was found guilty of the charges;

5. The supervisor of the tribunal members was present at the hearing and sat with the attorney presenting the administration's case;

6. She was denied an opportunity to voir dire the members of the hearing tribunal;

7. She was denied an opportunity to cross-examine the principal and assistant principals who conducted the investigation;

8. The subpoenas to the principal and assistant principals who conducted the investigation were quashed; and

9. The attorney for the Local Board acted in the dual role of presenter of the evidence and as legal advisor to the hearing tribunal.

The United States Supreme Court said, in the case of Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 (1975), that a student could be suspended for up to ten days without the necessity of a formal hearing if the student was informed of the charges, given a summary of the evidence available, and had an opportunity to present his side of the story. In the instant case, it is necessary to distinguish between a temporary suspension and a long term expulsion. A temporary suspension, or a suspension of up to ten days, can be made without the necessity of conducting a formal hearing under the standards set forth in Goss v.

Lopez, supra. A longer term suspension or expulsion, that is, a suspension or expulsion for longer than a ten-day period, requires some additional precautions. In the instant case, the suspension imposed by the Principal constituted a short-term suspension and could only be converted into a long-term suspension or expulsion if a requested hearing was provided, or if a hearing was not requested. All of the actions taken by the Principal were within his power and authority regarding temporary suspensions. The temporary suspension resulted only after the principal informed Appellant that she had been identified as the student who started the fire and she was given an opportunity to tell her side of the story. The principal's conduct of his investigation and his confrontation with Appellant did not require any formal proceedings in order to comply with the standards of constitutional due process. The more rigid standards became applicable only with respect to Appellant's expulsion after the ten-day period. Thus, it was not necessary for a formal hearing to be conducted, or to conduct a formal investigation, or permit cross-examination of witnesses, or to permit counsel to be present in order to impose the temporary suspension. With respect to the longer-term expulsion, Appellant was given formal written notice, a hearing, a list of the witnesses who would be testifying, the right to have counsel present, and an opportunity to cross-examine witnesses. The Hearing Officer, therefore, concludes that Appellant was not denied any due process rights with respect to the initial suspension, the conduct of the investigation by the principal, her

notice of the charges that were made against her, and the absence of counsel during the meetings, and the hearing conducted by the hearing tribunal resulted in Appellant obtaining due process in connection with the longer-term expulsion.

During the hearing, Appellant did not raise the issues that it was improper for the assistant superintendent to be present in the room to assist the attorney for the Local Board, and that it was improper for the Local Board's attorney to act in the dual capacity of presenter of the evidence and legal advisor to the hearing tribunal. An issue cannot be raised for the first time on appeal; it must be initially presented to the hearing tribunal and the hearing tribunal given an opportunity to consider the questions raised. See, Hobby v. Tift Co. Bd. of Ed., Case No. 1977-6. Since these issues were not raised before or during the hearing, the Hearing Officer concludes that they should not be initially addressed by the State Board of Education on appeal.

The State Board of Education has previously addressed the issue of whether a local board of education or members of a hearing tribunal can be subjected to a voir dire examination. In the case of Holley v. Seminole Co. Bd. of Ed., Case No. 1982-16, it was decided that the members of a local board are not subject to a voir dire examination since they sit in the capacity of a judge sitting without a jury and there are no provisions which permit voir dire of a judge. Appellant did not present any factual basis for inferring that any of the members of the hearing tribunal should have recused themselves from hearing

the case, and a limited voir dire of the members did not indicate any reasons any of them should have recused themselves. The Hearing Officer, therefore, concludes that Appellant was not denied due process because she was not able to conduct a voir dire examination of the members of the hearing tribunal.

The only two points remaining which were raised by Appellant are whether Appellant was denied due process because she was unable to conduct a cross-examination of the principal and the assistant principals who conducted the investigation, and because the subpoenas to these same people were quashed by the hearing tribunal. The hearing tribunal ruled that the testimony of the principal and assistant principals was irrelevant to the issues because they had not witnessed the setting of the fire. Appellant argued that it was relevant to determine why the principal recommended expulsion. Appellant also claims that the hearing procedures established by the Local Board gave her a right to examine the principal and the assistant principals.

The hearing provisions adopted by the Local Board provide:

Examination of Witnesses. Members of the board and the principal, the school board attorney, the student or his parents or his legal representative, may question witnesses about any matters logically relevant to the charge against the student and the proper disposition of the matter. The chairman has the authority to limit unproductively long or irrelevant questioning by non-board members. The chairman shall have the right to allow into evidence prior acts showing a course of conduct leading to the acts in question.

The hearing tribunal had the responsibility of determining Appellant's guilt or innocence from the evidence presented. The

affidavits did not address the facts surrounding the fire setting incident and they did not contribute or detract from the testimony heard by the hearing tribunal. The hearing tribunal also had the responsibility of deciding what disciplinary action was to be taken, and it was immaterial what the Principal recommended or why he recommended expulsion for the remainder of the semester. The only purpose the affidavits served was to show that the initial suspension was imposed only after an investigation, confrontation, and an opportunity for Appellant to be heard. Since a short-term suspension can be imposed without the necessity of a hearing, the administrative actions which led to the suspension are not subject to scrutiny as an ancillary part of a proceeding involving the question of long-term suspension, unless there are allegations made concerning the procedures which have not been raised in the instant case.

Since the principal and assistant principals did not have any knowledge concerning the fire-setting incident, their testimony would have been immaterial to the proceedings. None of the fruits of their investigation were entered into evidence and the investigation only produced the names of the witnesses, who were available for examination and cross-examination. Neither the principal nor the assistant principals could have provided any material testimony concerning the fire-setting incident.

The rule adopted by the Local Board grants the chairman discretionary authority to limit the testimony heard in a hearing. This hearing was conducted over a four day period of time. The hearing tribunal had listened to the witnesses of the

incident and the testimony of the principal and the assistant principals was unnecessary. The Hearing Officer, therefore, concludes that the hearing tribunal acted within its discretionary authority granted by the procedures adopted by the Local Board, and that the failure to permit cross-examination on the affidavits submitted and the quashing of the subpoenas did not deny Appellant any of her due process rights.

The Local Board has submitted a motion to dismiss the appeal as moot since Appellant could have returned to school at the beginning of the second semester of the 1982-1983 school year under the terms of the decision adopted by the Local Board. Appellant, however, argues that the decision is not moot since the record of her expulsion becomes a part of her permanent records and will prevent her from obtaining meaningful employment in the future. Additionally, since there are questions involving Appellant's due process rights, the issues presented are not moot simply because Appellant could have returned to school. The Hearing Officer concludes that the due process issues raised by Appellant, which have been addressed above, are such that they were not rendered moot as a result of Appellant's ability to return to school. Based solely on the record¹, Appellant was to be enrolled in another school on a probationary

¹ It was indicated to the Hearing Officer by counsel that Appellant did not return to school, even though she had the opportunity. Since, however, such information was outside the record, the Hearing Officer does not deem it relevant to consideration of the decision. O.C.G. § 20-1160(e).

basis pending the outcome of the appeal. A reversal of the Local Board's decision, therefore, would remove Appellant from any probationary status.

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 Appellant was not denied any due process rights and that there was evidence before the hearing tribunal and the Local Board which supports the decision to suspend Appellant for the remainder of the semester. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.


L. O. BUCKLAND
Hearing Officer