

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**GEORGE H.**

**Appellant**

**V.  
FULTON COUNTY BOARD  
OF EDUCATION,**

**Appellee.**

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**CASE NO. 1987-3**

**DECISION**

**PART I**

**SUMMARY**

This is an appeal by George H. (hereinafter "Student") from a decision of the Fulton County Board of Education to sustain the decision of a Disciplinary Tribunal to expel the Student from the system for the winter quarter, and to place the Student in an alternative center for the spring quarter. The Student contends on appeal that he was denied due process because he was not informed of the consequences if he confessed to the charges, and that the Local Board erred by not considering the Student as a special education student. The Local Board contends the State Board of Education does not have jurisdiction to decide the appeal, the rights of the Student were not violated, and the decision of the Local Board was within its authority.

**PART II**

**FACTUAL BACKGROUND**

The Student was involved in a confrontation with another classmate. The two argued and, when the classmate turned away, the Student picked up a chair and struck his classmate with the chair. The classmate was hospitalized as a result. Based upon the fact that a teacher and several students witnessed the incident, the Student was suspended and a disciplinary tribunal appointed to hear the case and determine the punishment to be imposed.

The Disciplinary Tribunal met on November 13, 1986 and, based upon the Student's denial of a violation of school rules, heard testimony which confirmed that the Student had struck his classmate with a chair when the classmate had turned his back to walk away. After several witnesses confirmed the facts, the Student admitted he had violated the rules. The Disciplinary Tribunal then decided the Student should be expelled from all Fulton County Schools through winter quarter of 1987, and, beginning spring quarter, he should attend the South Fulton Alternative School. It was further recommended that a visiting teacher or school social worker work with the Student and his family during the winter quarter.

The Student appealed the decision of the Disciplinary Tribunal to the Local Board, which sustained the Disciplinary Tribunal's decision on December 11, 1986. The Student filed this appeal on Monday, January 12, 1987.

### **PART III**

#### **DISCUSSION**

The State Board of Education is authorized to hear appeals from decisions made by local boards on matters of local controversy involving the construction or administration of the school laws. O.C.G.A. §20-20-1160. The State Board of Education is not authorized to substitute its judgment for that of the local board, and must sustain the decision of the local board if there is any evidence to support the local board's decision, absent an abuse of discretion or violation of law by the local board. See, Ransum v. Chattooga Cntv. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11.

The Local Board contends that the Student has no right to appeal the Local Board's decision. The Local Board argues that O.C.G.A. §20-2-755 (c) provides that the Local Board's decision is final, thus precluding any appeal to the State Board of Education. The Local Board further argues that O.C.G.A. §20-2-757, which provides that the public records and open

meetings laws shall not apply to disciplinary tribunal proceedings or to an “appeal or review thereof conducted by a school administration or board of education,” supports its position because no mention is made of appeals to the State Board of Education being exempted from those laws.

O.C.G.A. §20-2-755 provides, in part:

(c) ... 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. §20-2-758 provides:

Nothing in this subpart shall be construed to prohibit, restrict, or limit in any manner any cause of action otherwise provided by law and available to any teacher, school official, employee, or student. The provisions of subsections (b) through (f) of Code Section 20-2-1160 shall apply to all proceedings under this subpart.

From the language of these two sections, it appears clear that the right of appeal to the State Board of Education in cases involving student disciplinary tribunals has not been abrogated. O.C.G.A. §20-2-758 specifically provides that O.C.G.A. §20-2-1160 (b) through (f) shall apply to all proceedings under the act. Since O.C.G.A. §20-2-1160 (b) through (f) generally deals with appeals, it appears clear the General Assembly intended appeals from decisions of local boards to the State Board of Education to be available under the Public School Disciplinary Tribunal Act. It must be presumed the General Assembly was aware that appeals by students from decisions of local boards were common at the time the General Assembly enacted O.C.G.A. §20-2-758. The statement in O.C.G.A. §20-2-755, that the decision of the Local Board is final, simply means that the decision is final unless appealed to the State Board of Education. As argued by Appellant, the decision by a local board is final in that it is an appealable decision rather than an interlocutory decision.

Because the Student has the right to appeal to the State Board of Education, the merits of the Student's appeal, if any merits were presented, should be addressed. However, only issues which were raised before the Local Board, may be heard by the State Board of Education on appeal. Sharplev v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Lonci Cnty. Bd. of Ed., 245 Ga. 647 (1980).

The Student raises, two arguments on appeal: that he was denied due process because he was not informed of the consequences if he confessed to the charges, and that the Local Board erred by not classifying him as a special education student. Neither of these arguments was raised before the Local Board and there is no evidence the Local Board issued a decision respecting these arguments. The arguments, therefore, may not be raised for the first time on appeal before the State Board of Education.

#### **PART IV**

#### **DECISION**

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education concludes that the Student has the right to appeal the decision of the Local Board to the State Board of Education, but the Student has presented no issues on appeal which were raised before the Local Board. The decision of the Local Board is, therefore, SUSTAINED.

Larry Foster, Sr.  
Vice Chairman for Appeals