



The Student was suspended for ten days, and a notice was sent to the Student's parents that a Student Disciplinary Tribunal would be convened to consider the case. The Student was charged with (1) fighting on school property; (2) disrespect toward school personnel; (3) failure to leave school premises upon request, and (4) use of abusive language toward school personnel. The Student Disciplinary Tribunal conducted the hearing on February 2, 1988. Counsel for the Student made a motion at the beginning of the hearing to dismiss the proceeding against the Student because complaints were not filed under the provisions of O.C.G.A. § 20-2-943. The motion was denied and the Tribunal proceeded to hear witnesses.

At the conclusion of the hearing, the Tribunal found the Student guilty of the charges of (1) fighting on school property; (2) disrespect to school personnel, and (3) use of abusive language to school personnel. The Tribunal suspended the Student for the remainder of the 1988 school year and required her to seek professional counseling. The Student appealed the decision to the Local Board. The Local Board upheld the decision, but dropped the requirement to obtain any counseling. The Student then made a timely appeal to the State Board of Education.

### **PART III**

#### **DISCUSSION**

The Student maintains that the Tribunal should have dismissed the case upon counsel's motion because no complaints were filed as required by O.C.G.A. § 20-2-753(b), thus violating her due process rights under both the United States and Georgia constitutions. We find that the Student's due process rights were not violated.

O.C.G.A. § 20-2-753(b) provides:

The [Local Board] shall by appropriate rule, regulation, or resolution require that when any instance specified in subsection (a) of this Code occurs, the teacher, other school official, employee, or student who is subjected to the assault, battery, or damage shall file a complaint with the school administration and with the local board of education.

Subsection (a) of section 20-2-753 provides that a disciplinary tribunal shall hold a hearing in instances involving assault or battery upon other students, teachers, other school officials or employees, or when there has been damage to school property.

The Public School Disciplinary Tribunal Act, Ga. Laws 1979, p. 663 et seq., (O.C.G.A. § 20-2-750 et seq.) permits local boards of education to establish tribunals composed of non-board members to hear student discipline cases and impose suspension or expulsion. The creation of a tribunal is permissive rather than mandatory. O.C.G.A. § 20-2-752.

It is apparent that the purpose of the Act is to permit local boards of education to delegate the function of receiving evidence in school disciplinary procedures. Even with a tribunal in place, the rights and procedures in effect when a tribunal has not been created are left intact. O.C.G.A. § 20-2-754 (right to notice, right to counsel, right to cross-examine witness, and review and decision by local board); O.C.G.A. § 20-2-758 (appeal to State Board of Education). The Act does not grant any additional rights to a student simply because a local board has opted to utilize a tribunal to perform one of its functions, i.e., the receipt of evidence and imposition of disciplinary measures, nor does it diminish the power, authority, and responsibility of local boards of education to manage the affairs of the public schools.

The Student's argument, that her due process rights were violated because a complaint was not filed by the other student involved in the incident, fails for at least two reasons. If the Student's argument was accepted, then the power and duty of a local board of education to maintain and manage the affairs of the public schools would be usurped by being dependent upon the actions of others and whether they filed a complaint. Additionally, students living in jurisdictions that adopted the tribunal process would obtain an additional right of procedural due

process not enjoyed by students living in jurisdictions that abstain from adopting the tribunal process. We do not think either of these results is a proper interpretation of the Act since we view the Act as being primarily a delegation of a function that does not grant any additional due process rights or decrease the power, authority, and duties of local boards of education.

O.C.G.A. § 20-2-753 requires a complaint to be filed when there is an alleged assault or battery. In the instant case, the Student was found guilty of fighting on school property, disrespect to school personnel and the use of abusive language. O.C.G.A. § 20-2-753 does not require the filing of a complaint in situations involving disrespect to school personnel or the use of abusive language. Thus, the hearing before the tribunal could have proceeded on these other charges that are not mentioned in the Act as requiring a complaint to be filed. The inaction of another student, therefore, does not impact on the ability of the tribunal to conduct a hearing. The only effect the lack of a complaint would have is an inability to consider the assault itself, which is not the intent of the Act. The State Board of Education, therefore, holds that the filing of a complaint in situations involving an assault is merely a ministerial act, and the lack of a complaint does not deny a student any due process rights.

The Student also complains on appeal that she was denied due process because the attorney that represents the Local Board presented the case against her to the tribunal. The Student maintains that a local rule, which provides that the principal shall present evidence against the student, precludes an attorney from presenting evidence. The Student did not cite any authority in support of this proposition, and no basis was established to show that any due process rights were violated. As pointed out by the Local Board, O.C.G.A. § 2-2-754(a) (1) provides, in part, that “all parties ... [have the right] to be represented by legal counsel.” The principal, therefore, as the representative of one of the parties, has the right to be represented by counsel.

The Student claims she was denied due process because the principal was permitted to testify over objection. Her claims are based on the fact that the principal remained in the hearing room when the witnesses were sequestered and the principal's testimony was not rebuttal testimony. The principal, as the representative of a party, had a right to remain in the hearing room. Additionally, the principal's testimony only related to whether a complaint had been filed with him, and an issue was not raised whether the testimony was proper or improper rebuttal. We, therefore, conclude that the principal's testimony was properly admitted without any violation of any of the Student's due process rights.

The Student claims her due process rights were violated because she was notified that she only had fifteen days in which to file an appeal to the Local Board, but O.C.G.A. § 20-2-754(b) permits twenty days in which to appeal. The record does not show that there was any attempt to dismiss the Student's appeal because it was untimely, and the Student has not shown where she was harmed. We, therefore, conclude that the Student's due process rights were not violated because the Local Board gave her improper information concerning the time requirements for appeals.

The Student's final claim is that she was denied due process because opposing counsel made reference, during arguments before the Local Board, to a memorandum he had delivered to the Local Board. There is no evidence in the record concerning the memorandum or what was stated by counsel. While counsel's remark may have been improper, there was adequate evidence available to support the Local Board's decision without reference to anything outside the record. Since the State Board of Education can only base a decision on the record submitted, and it does not appear that there was any harm committed, we conclude that the Student's claim does not support a reversal of the Local Board's decision.

**PART IV**

**DECISION**

Based upon the foregoing, the record, and the briefs and arguments of counsel, the State Board of Education is of the opinion that the Local Board properly upheld the decision of the Student Disciplinary Tribunal and the Student's due process rights were not violated. The decision of the Local Board, therefore, is

SUSTAINED.

This 9th day of June, 1988.

John M. Taylor  
Vice Chairman For Appeals

