

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CHAUNCEY Z.,	:	
	:	
Appellant,	:	
V.	:	
	:	CASE NO. 1992-42
COBB COUNTY	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Chauncey Z. ("Student") from an October 12, 1992, decision by the Cobb County Board of Education ("Local Board") to uphold the decision of a disciplinary tribunal to expel the Student for the remainder of the 1992-1993 school year with re-admittance in an alternative school during the first semester of the 1993-1994 school year and re-admittance to his regular high school upon completion of his stay in the alternative school without incident. The Local Board's decision was based upon the findings of the disciplinary tribunal that the Student was involved in a fight with another student at a bus stop which resulted in the other student being hospitalized. The Student claims on appeal that the Local Board's decision (1) denied him equal protection because it imposed punishment upon him that is significantly more stringent than the punishment imposed upon others similarly situated; (2) was improper because it imposed punishment upon him that was more stringent than established by the disciplinary tribunal, and (3) was improper because the Student did not receive notice that his appeal could result in more severe punishment. The case is remanded for the entry of reasons for the increased punishment.

On September 3, 1992, the Student was involved in a fight at his bus stop with another student named Keenan. During the fight, Keenan was knocked unconscious. While he lay on the ground, the Student and another student continued to hit and kick him in the head and body. The bus driver thought that Keenan was dead when she first saw him on the ground. Keenan was hospitalized as a result of the beating.

At a disciplinary tribunal hearing on September 18, 1992, the Student admitted to being involved in the fight and hitting Keenan. The Student claimed that he acted in self defense. At the conclusion of the hearing, the disciplinary tribunal found that the Student had violated the Local Board's policy JCDA, which provides, in part:

No student shall assault or do bodily injury to another person on school grounds at any time, off school grounds at school activities, or enroute to and from school by bus

The disciplinary tribunal voted to (1) suspend the Student from the Cobb County School District for the remainder of the first semester of 1992-1993; (2) admit the Student to the Cobb County School District's alternative school at the beginning of the second semester of the 1992-1993 school year, and (3) "[u]pon successful completion of [his] contract and the recommendation of

the principal, he may return to [his regular school].”

The Student appealed to the Local Board. Without entering any findings of fact, the Local Board decided on October 12, 1992, to (1) expel the Student for the remainder of the 1992-1993 school year; (2) permit the Student to return to the alternative school for the fall semester of the 1993-1994 school year, and (3) upon successful completion of one semester at the alternative school, the Student can return to his regular high school. The Student filed a timely appeal with the State Board of Education.

The central issue in this appeal is whether a student can be subjected to greater disciplinary measures because he exercises his right to an appeal.

The Public School Disciplinary Tribunal Act, O.C.G.A. § 20-2-750 *et seq.*, provides for the appointment of tribunals to hear allegations of assault or battery by a student upon another student. O.C.G.A. § 20-2-753(a)-(2). The decision of the tribunal can be appealed to the local board of education if the appeal is filed within twenty days after the decision of the tribunal. O.C.G.A. § 20-2-754(b). The local board of education is then directed to make a decision based on the record and the local board “may take any action it determines appropriate” O.C.G.A. § 20-2-754(c).

In Georgia Real Estate Commission et al. v. Hooks, 141 Ga. App. 226, 233 S.E.2d 16 (1977), the issue arose whether a reviewing body could impose a harsher punishment. The Court held that there was a denial of due process if the Commission did not explain its decision to impose harsher penalties when it reviewed on appeal an otherwise final decision. The Court reasoned that the possibility of vindictiveness was otherwise too great. In our view, the same reasoning is applicable in this case. A local board of education cannot impose a more severe punishment in the absence of an explanation for the harsher punishment.

With respect to the Student’s other grounds for appeal, the record does not show that the Student received punishment that was more stringent than the punishment imposed upon others similarly situated, but the record does show that the Student was informed that the Local Board could take any action it determined appropriate. The State Board of Education concludes that the Student’s additional grounds for appeal are not substantiated by the record.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board’s decision violated the Student’s due process because it did not explain the reason for the harsher punishment. Since, however, the Local Board was authorized to increase the Student’s punishment from the punishment imposed by the disciplinary tribunal, we remand the case for the entry of reasons for the increased punishment.

This 11th day of March, 1993.

Robert M. Brinson
Vice Chairman for Appeals