

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES S.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1993-48
vs.	:	
	:	DECISION
ROME CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by James S. (Student) through the Department of Children and Youth Services (DCYS) from a decision by the Rome City Board of Education to permanently expel the Student. The Student claims he was denied due process because a hearing was held without giving him notice. The Local Board's decision is reversed, the case is remanded, and the Local Board is directed to hold a hearing with the Student present.

PART II

FACTUAL BACKGROUND

On October 6, 1993, the Student engaged in an argument with another student. The principal physically restrained the Student and a teacher intervened when the other student attempted to go after the Student. While the principal restrained the Student, fights began among some other students who were in the area. During the scuffle, a teacher received a cut on his face when his glasses were hit. The Student was temporarily suspended and the principal referred the incident to a Student Disciplinary Tribunal with a recommendation of permanent expulsion.

The principal mailed a letter by certified mail to the Student's mother that a hearing would be held on October 18, 1993. On Monday, October 18, 1993, the Student Disciplinary Tribunal conducted a hearing without the Student's presence and entered a decision to permanently expel the Student.¹ On October 29, 1993, the certified letter to the Student's mother

¹ From DCYS' brief, DCYS claims that the Student was under the control of DCYS and the school records showed the address of the Student's case worker, but notice was never sent to the

was returned to the Rome City School System with a stamp that it had been unclaimed. On November 5, 1993, DCYS filed an appeal from the Student Disciplinary Tribunal decision with the Local Board. In the appeal, DCYS included copies of the returned envelopes and informed the Local Board that the Student's mother never received notice of the hearing. The Local Board met on November 15, 1993, and voted to uphold the Student Disciplinary Tribunal decision. An appeal was then filed with the State Board of Education.

PART III

DISCUSSION

DCYS claims that the Student's due process rights were denied because he was not given notice of the hearing and was unable to attend the hearing. The Local Board claims that sufficient notice was given when it sent a certified letter to the Student's mother at her last known address, even if the letter was unclaimed.

The Local Board's policy JCDA requires that "[t]he Superintendent shall cause a notice to be given to the student and his/her parents or guardian, either in person or by mail directed to their last known address. Similarly, O.C.G.A. § 20-2-754 requires "reasonable notice served personally or by mail ... to the parent or guardian of the student..." O.C.G.A. § 20-2-754(a)(1).

In *Menke v. First Nat. Bank*, 168 Ga. 495 (1983), the Court held that where there is a presumption of receipt when a certified letter is sent, the presumption can be defeated by un rebutted evidence of non-receipt. In *Menke*, the bank sent a certified letter to appellant and the letter was returned to the bank as unclaimed; appellant provided an affidavit to support his motion for summary judgment that he was out of town when the letter was delivered to his address. *See, also, Shelton v. Rodgers*, 160 Ga. App. 910 (1982)(lack of notice must appear upon the face of the record), and

In this case, the Local Board did not take any additional evidence, but, instead, merely relied upon the record produced at the Student Disciplinary Tribunal hearing. The only evidence in the record that the notice was not received by the Student's mother is the envelope stamped "Unclaimed" that the Superintendent sent to the State Board of Education. There is also the claim in the appeal to the Local Board that the Student's mother did not receive the notice, along with the claim that the Student was under the control of DCYS and DCYS was not given notice of the hearing. Thus, while it can be argued that no evidence was presented to either the Student Disciplinary Tribunal or the Local Board that the Student's mother did not receive notice, the

case worker. On Friday, October 15, 1993, the Student's case worker, without knowledge of the impending hearing, withdrew him from the Rome City School System because DCYS was placing the Student with another family located in another school system. DCYS became aware of the hearing and expulsion when an attempt was made to enroll the Student in the new school system, which refused to admit the Student because he had been permanently expelled from the Rome City School System. *Henson v. State*, 168 Ga. App. 210 (1983)(Court's citation that presumption of receipt of properly addressed, duly stamped, and deposited mail is rebuttable).

record forwarded to the State Board of Education contains sufficient information to indicate that neither the Student's mother nor DCYS received notice so that the State Board of Education concludes that the Local Board should have permitted evidence to be presented concerning the receipt or non-receipt of the letter. In light of the information contained in the record, the claims made in the briefs, and the severity of the punishment imposed, the State Board of Education further concludes that a hearing should be conducted on the initial charges with the Student present, with the opportunity to be represented by counsel and to examine and cross-examine witnesses.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board denied the Student due process by conducting a hearing without giving him, his parent, or his guardian notice of the hearing and without his presence. Accordingly, the Local Board's decision is reversed and the case is remanded with direction that the Local Board cause a hearing to be conducted with the Student present.

This 10th day of March, 1994.

Mr. Williams was not present. Mr. Lathem's seat is vacant due to his resignation effective December 31, 1993.

Richard C. Owens, Chairman
State Board of Education