

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT M.,	:	
	:	
Appellant,	:	
	:	
	:	CASE NO. 1995-12
vs.	:	
	:	DECISION
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Robert M. (Student) from a decision by the Fulton County Board of Education (Local Board) to uphold the decision of a Student Disciplinary Tribunal to suspend him for the remainder of the 1994-1995 school year, with the option of enrolling in the Local Board's Second Chance program during the period of suspension, because he attacked another student on school grounds and caused the student to suffer a concussion. The Student claims that he was denied procedural due process and that the Local Board has improperly punished him because he should be a special education student. The Local Board's decision is sustained.

On November 3, 1994, the Student, who was fourteen years old, attacked another student by running up behind the other student and striking the student in the back of the head with his elbow. The other student fell forward and struck his head. As a result, the other student suffered a concussion and had to be hospitalized for observation. The Student was charged with battery against another student. A Student Disciplinary Tribunal met on November 21, 1994. After hearing from witnesses, the Student Disciplinary Tribunal found the Student guilty of the charges and suspended him for the remainder of the 1994-1995 school year, with the option of attending the Second Chance program. Upon appeal, the Local Board upheld the Tribunal's decision. The Student then filed a timely appeal to the State Board of Education.

The Student claims he was denied procedural due process in the hearing before the Student Disciplinary Tribunal because the written statements of some of the students who testified on behalf of the school system were offered to the students before they testified, but a similar offer was not made to a student who testified on behalf of the Student. The Student argues that the Tribunal may have used discrepancies between the written statement given by his witness and the testimony his witness gave at the hearing as a basis for deciding against him.

The Student's complaint goes to how he presented his witness, not to any actions taken by the Student Disciplinary Tribunal. Neither the Tribunal nor the school system was required to insure that the Student's witnesses did not make inconsistent statements. The Student's claim of procedural error is without merit.

The Student next claims that the Local Board's decision violates the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 et seq. (the "Act" or "IDEA"),

because he has been diagnosed as having attention deficit disorder. The Student, however, is not enrolled in any special education program and, therefore, does not come under the procedural requirements set forth by IDEA. The Act has special provisions for determining a student's eligibility for special education. This appeal, and the original hearing, arise from the provisions of Q.C.G.A. § 20-2-950 et seq. and § 20-2-1160. Neither of these state law provisions provides a forum for determining a student's eligibility for special education services. The State Board of Education, therefore, concludes that the Local Board's decision does not violate the provisions of IDEA.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student was not denied procedural due process, and the Local Board's decision is not in violation of any law. Accordingly, the Local Board's decision is SUSTAINED.

This 8th day of June, 1995.

Robert M. Brinson
Vice Chairman for Appeals