

STATE BOARD OF EDUCATION

STATE OF GEORGIA

G. R. B.,

Appellant,

vs.

**WALTON COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1999-63

DECISION

This is an appeal by G. R. B. ("Student") from a decision by the Walton County Board of Education ("Local Board") not to remove a disciplinary action from his permanent records. The Student asked for the change in his records after a juvenile court dismissed a battery charge filed against him as a result of a school bus incident that occurred on January 29, 1999. The Local Board's decision is sustained.

On January 29, 1999, the Student was riding the school bus home. After the bus driver spoke to the Student about being out of his seat, the Student brushed up against the bus driver. The bus driver felt the touching was accidental and she said nothing. Then, as the Student was exiting the bus and the bus driver was leaning to hold the bus door open, the Student backed up so that his book bag struck the bus driver, knocking her glasses to the floor and bruising her face. The bus driver reported the incident and the Student was charged with simple battery and a hearing was scheduled under the provisions of O.C.G.A. § 20-2-750 *et seq.*

A student disciplinary tribunal held a hearing on the simple battery charge and found the Student guilty. The tribunal expelled the Student for the remainder of the 1998-1999 school year. The Student did not appeal the decision. A criminal charge of simple battery was then filed against the Student in juvenile court.

To prepare for the case in juvenile court, an assistant district attorney conducted an investigation. The assistant district attorney decided against prosecuting the case when the bus driver told him she would not testify that the Student struck her deliberately. The charges in juvenile court were then dismissed.

Based upon the dismissal and the bus driver's refusal to testify that the Student struck her deliberately, the Student asked the Local Superintendent to expunge his record because the tribunal's finding of his guilt rested on the false testimony of the bus driver. The Local Superintendent refused to change the Student's record and the Student appealed to the Local Board. The Local Board heard the Student's arguments but sustained the Superintendent's decision not to change the Student's records. The Student then filed an appeal with the State Board of Education.

The Student claims on appeal that the Local Board erred in not removing the reference to the bus incident from his record because he claims the tribunal's decision was based on false testimony.

O.C.G.A. § 20-2-754(c) gives a student 20 days to appeal a disciplinary tribunal decision to the local board of education. A student also has 30 days to appeal from the decision of the local board to the State Board of Education. In the instant case, the Student did not appeal the decision of the disciplinary tribunal and the time for filing an appeal has passed. The Student, therefore, is barred from having the tribunal's decision changed.

The Student's present appeal to the State Board of Education is an untimely collateral attack on the tribunal's decision. There is nothing in the record to indicate that the tribunal made its decision improperly. The Student claims that the bus driver's refusal to testify in the juvenile proceeding establishes that she improperly testified before the tribunal by claiming that she felt the Student intentionally struck her the second time. The bus driver's opinion testimony, however, did not and could not establish whether the Student intentionally struck her. Intent has to be established by the trier of fact based upon the evidence presented. The tribunal had the objective factors of the Student's prior actions and comments from which to determine whether the Student's actions were intentional. What took place in the juvenile proceedings is immaterial to the tribunal's decision because the standard of proof differs in the criminal and the administrative contexts. Additionally, the bus driver's affidavit shows that the bus driver disagreed with the punishment imposed by the tribunal. The Local Board could determine that the bus driver's disagreement about the punishment resulted in her changing her observations. The State Board of Education concludes that the hearing before the tribunal was properly held and the tribunal's decision is not subject to collateral attack. Additionally, there has been no showing that the Local Board acted arbitrarily or capriciously in refusing to change the Student's record.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was properly made. The Local Board's decision, therefore, is

SUSTAINED.

This 23RD day of February 2000.

Bruce Jackson
Vice Chairman for Appeals