

STATE BOARD OF EDUCATION

STATE OF GEORGIA

B. R.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1999-74
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by B. R. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to expel him for the remainder of the 1999-2000 school year after a student disciplinary tribunal found him guilty of assaulting two female students. The Student claims that the tribunal prejudged the case, the tribunal was improperly constituted, he was improperly denied an opportunity to cross-examine witnesses and present testimony on his behalf, and there was no evidence to support the charges. The decision of the Local Board is sustained.

On September 30 and October 14, 1999, the Student threatened a female student. The female student reported the threats and the school administrators initiated an investigation. During the investigation, the administrators discovered that another female student claimed the Student had also threatened her. The Student was charged with violating the Local Board's rules against making threats and indecency. The female students and other witnesses provided testimony before a student disciplinary tribunal. The tribunal found the Student guilty and decided to expel him until the end of the 1999-2000 school year with the option of attending an alternative school. The Local Board upheld the tribunal's decision and the Student appealed to the State Board of Education.

The Student claims that the tribunal hearing was improperly conducted because the principal attended but another administrator was not present and he was unable to present all of his witnesses and evidence. Additionally, the tribunal was improperly constituted because there were only two members present and they prejudged the case. The Student also claims that one of the witnesses was untruthful. None of the Student's contentions has any merit.

The Student claims that the principal's presence at the hearing was somehow intimidating to the tribunal members. The tribunal members were from different schools outside the realm of the principal's sphere of influence. There would be no reason for the tribunal members to be intimidated by the principal and there was no evidence of any such intimidation. The State Board of Education concludes that the Student's claim of intimidation is groundless.

The Student claims there was error in the conduct of the hearing because another administrator was not present at the hearing. The Local Board, however, is not required to have any particular witness at a hearing. If the Student wanted a particular person present at the hearing, he should have subpoenaed that witness. The State Board of Education concludes that there was no error because a particular administrator was not present at the hearing.

The Student also claims he was unable to present all of his witnesses. The record, however, shows that the Student was allowed to call all the witnesses he wanted to call. The Student agreed not to call some additional witnesses because their testimony was cumulative. The State Board of Education, therefore, concludes that the Student was not denied an opportunity to present any witnesses.

The Student claims that the tribunal was improperly constituted because it had only two members. At the beginning of the hearing, however, the Student agreed to proceed with only two tribunal members and thus waived any objection to the number on the tribunal. The State Board of Education concludes that no error occurred because there were only two tribunal members.

The Student also claims that the tribunal members prejudged the case. The Student has not shown anything to support the charge. Before the hearing started, the tribunal members were qualified and neither had any knowledge of the Student or the charges. The Student agreed that the tribunal members could serve and did not raise any objection. The State Board of Education concludes that the Student's claim that the tribunal members prejudged the case is without merit.

The Student also claims that there was no evidence to support the charges. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). There was testimony that the Student threatened to "bomb" and beat the other students. It was the duty of the tribunal to decide on the credibility of the witnesses. There was, therefore, evidence to support the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student any due process rights and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This 13th day of April 2000.

Bruce Jackson
Vice Chairman for Appeals