

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>Z. J.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2004-15</b>
	:	
<b>WALTON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Z. J. (Student) from a decision by the Walton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the first semester of the 2003-2004 school year with the opportunity to attend alternative school during the expulsion period. The tribunal found the Student guilty of assaulting a teacher and had permanently expelled him, but the Local Board reduced the expulsion period to the balance of the 2002-2003 school year and the first semester of the 2003-2004 school year. The Student argues that he was denied due process and the evidence did not support the charges. The Local Board's decision is sustained.

On May 15, 2003, the Student bumped into a teacher as he left the classroom. At the time of the incident, the Student was angry and had demanded that the teacher step aside as he went towards the door. The teacher claimed that the Student's shoulder touched her when he left the room. The principal charged the Student with physical violence towards a teacher. Upon hearing the evidence, a student disciplinary tribunal found the Student guilty of the charges and permanently expelled him from regular school with the option of attending an alternative school during his expulsion. When the Student appealed to the Local Board, the Local Board upheld the tribunal's decision but reduced the expulsion period to one semester. The Student then filed an appeal with the State Board of Education.

On appeal to the State Board of Education, the Student claims that he was denied due process and the evidence did not support the charges. The Student claims he was denied due process because he was told that the school system would not have an attorney present at the hearing if he was not going to have an attorney, but an attorney represented the school system at the hearing despite the Student's waiver of his right to have an attorney present. The Student also claims that a videotape from a surveillance camera shows that he did not touch the teacher.

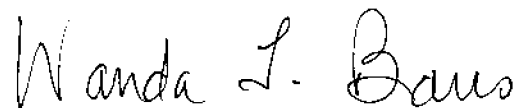
The record shows that the attorney for the school system served as a hearing officer and advised the tribunal on procedural matters. On occasion, the attorney interjected with a reminder of the purpose of the hearing when the Student asked questions that were not relevant to the charges. The Student has not shown that the attorney's involvement prejudiced him or resulted in any denial of due process. The Student also did not voice any concern during the hearing about the attorney's presence or involvement. Accordingly, the State Board of Education concludes that the attorney's presence at the hearing did not deny the Student due process.

"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). The teacher who was struck testified that the Student hit her with his shoulder after telling her to move out of the way. From the available evidence, the tribunal could decide that the Student willfully struck the teacher upon exiting her room.

The Student also claims that he should have been receiving services under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA). There was, however, no evidence presented that the Student is eligible for services under IDEA. A statement by the Student's mother that he was depressed as the result of some deaths in the family does not establish that the Student is eligible for services under IDEA, nor does it require the school system to initiate procedures to determine if the Student is eligible. This issue, therefore, is without any merit.

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

This 14<sup>th</sup> day of November 2003



Wanda T. Barrs  
Chair, State Board of Education