

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. A.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-56
	:	
ROCKDALE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by A. A. (Student) from a decision by the Rockdale County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him through the first semester of the 2006-2007 school year after finding him guilty of striking another student. The Student claims that he was denied due process, the evidence did not support the charges, and he should be receiving special education services, which prevents his expulsion from school. The Local Board's decision is sustained.

On October 20, 2005, the Student struck another student in the face without provocation. A teacher witnessed the incident and saw the Student raise his arms and make a gesture that she interpreted as indicating that he had just accomplished something. She also heard the striking and heard the other student crash against the wall of the hallway. Another teacher saw the Student making the gesture and then saw the other student collapsed on the floor. The Student was charged with disruption of school and battery against another student.

A student disciplinary tribunal heard the evidence concerning the incident.¹ The two teachers testified along with an assistant principal and the school resource officer. The Student denied that he had struck the other student; he claimed that he left the scene before the incident occurred. The tribunal found the Student guilty and expelled him until the end of the first semester of the 2006-2007 school year. The Local Board upheld the tribunal's decision and the Student filed an appeal to the State Board of Education.

On appeal, the Student claims that he is a special education student and should not be expelled from school because of the provisions of the Individuals with Disabilities

¹ Hearings were heard before two tribunals, both of which found the Student guilty of the charges. The Local Board reversed the findings of the first tribunal because it relied only on hearsay evidence. The facts set forth herein are those established at the second hearing.

Education Act, 20 U.S.C. Secs. 1400 *et seq.*, as amended (the "Act" or "IDEA"). He additionally claims that the disciplinary tribunal was the improper forum because of his disability. The record, however, shows that the Student was released from special education in March 2005. Another staffing was conducted between the date of the incident and the tribunal hearing and it was determined that the Student was not eligible for special education services. Since the Student was released from special education, the provisions of IDEA are inapplicable and the Student's IDEA claims are without merit.

The Student also claims that his due process rights were denied because a page of his appeal letter was omitted by the Local Superintendent from the materials provided to the Local Board. After the Local Board announced its decision, the Student's parent pointed out that the page from her appeal letter was missing from the materials provided to the Local Board members. Copies of the page were then provided to the Local Board members. They reconsidered their decision and again decided to uphold the decision of the student disciplinary tribunal. The Student has not shown how his due process rights were denied or how the reconsideration did not cure any harm that might have existed because the page was initially missing. Accordingly, the State Board of Education concludes that if there was an error, it was a harmless error that does not warrant reversal of the Local Board's decision.

The Student claims that his due process rights were denied because the school system failed to call as witnesses the students who had given statements at the first hearing. A school system, however, is not required to call any particular witnesses or to have them available for cross-examination. The Student had the right to subpoena witnesses and the record does not show that he availed himself of that right. The State Board of Education, therefore, concludes that there was no denial of due process because witnesses were not called by the school system.

The Student also claims that he was denied due process because he was prevented from cross-examining a witness. The Student failed to point out where he was prevented from cross-examining a witness and a review of the record does not disclose that a cross examination was prevented. The State Board of Education concludes that the Student was not denied due process because of any inability to cross-examine witnesses.

The Student claims that he was denied due process because evidence of his prior disciplinary incidents was admitted without any evidence of his disability being admitted. The record shows that evidence of the Student's disciplinary history was not admitted until after the tribunal found him guilty of the charges. A tribunal is permitted to examine a student's disciplinary history before deciding on what disciplinary action to take. *See, C. D. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1996-72 (Ga. SBE, Mar. 17, 1997). The State Board of Education, therefore, concludes that the tribunal did not commit any error in reviewing the Student's disciplinary records.

The Student also claims that the Local Board's decision violates public policy because of the errors made during the proceedings, as outlined above. As pointed out

above, the Student's due process rights were not violated and none of these issues warrants reversal of the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision, the Student's due process rights were not violated, and the Local Board acted within its discretionary authority. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of May 2006.

William Bradley Bryant
Vice Chairman for Appeals