

STATE BOARD OF EDUCATION

STATE OF GEORGIA

B. F.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2007-63
	:	
EVANS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by B. F. (Student) from a decision by the Evans County Board of Education to expel him from school until the end of the 2007-2008 school year after a student disciplinary tribunal found him guilty of disrupting school and harassing other students. The tribunal decided to assign the Student to in-school suspension for ten days. When the Student appealed, the Local Board expelled him until the end of the 2007-2008 school year. The Student claims that the Local Board and the school system denied him due process, there was no evidence to support the tribunal’s decision, and the Local Board’s decision was arbitrary and capricious. The Local Board’s decision is reversed.

On April 4, 2007, the school system charged the Student, a seventh grader, with disrupting the school and with harassment of other students and informed him that a hearing would be held on April 9, 2007. The charge letter did not inform the Student of why the charges were being made against him or the dates or periods that he allegedly violated any of the Local Board’s policies. The Student did not receive the charge letter before the scheduled hearing. Nevertheless, the Student appeared at the hearing before the tribunal and did not request a continuance, although he stated to the tribunal that he had not received the notice.

At the hearing before the tribunal, a representative from the school system testified that the Student and another student were in possession of a typewritten list that contained the names of some other students. The list was headed up with the letters “KKK” and had ten first names on it. The Student testified that the two of them were “just having fun”. The two of them were looking at the list when a teacher took it from them. The tribunal found the Student guilty of disrupting the school and harassing other students and gave him a ten-day in-school suspension.

When the Student appealed, the Local Board affirmed the finding of guilt but expelled the Student until the end of the 2007-2008 school year. The Student then filed an appeal to the State Board of Education.

The Student claims that there was insufficient evidence to find him guilty of the charges. He also claims that he was denied due process because his disciplinary history was admitted at the beginning of the tribunal hearing, thus biasing the tribunal members. The Student also claims that he was denied due process because the Local Board failed to conduct a *de novo* hearing when he appealed the tribunal's decision. Additionally, the Student claims that the Local Board and the tribunal improperly failed to consider that he has been diagnosed as having an attention deficit, hyperactivity disorder and should be treated under the provisions of Section 504 of the Rehabilitation Act of 1973.

The Student was charged with violating the Local Board's Rule 1C, which provides:

No student shall [i]n any manner, by the use of violence, force, noise, coercion, threat, resistance, or any other conduct, intentionally cause the disruption of any lawful mission, process, or function of the school, or engage in any such conduct for the purpose of causing the disruption or obstruction of any such lawful mission, process, or function.

Claxton Middle School 2006-2007 Student Handbook, p. 42.

In addition, the Student was charged with violating the Local Board's Rule 24, which provides:

A. A student shall not harass another student or employee through disparaging conduct or communications. Harassment includes racial harassment, sexual harassment, and bullying.

B. Racial Harassment may include:

1. Oral or written statements having racially demeaning implications made or sent to an individual.
2. Gestures or conduct rooted in racial prejudice or racial factors of consideration that signal contempt toward another of any race.

C. Sexual Harassment is an unwelcome advance, request, or other verbal or physical conduct of a sexual nature that results in the conduct having the purpose or effect of unreasonable interfering with work or learning performance or creating an intimidating, hostile, or offensive working or learning environment.

D. Bullying is any willful attempt or threat to inflict injury on another person, when accompanied by an apparent present ability to do so, or any intentional display of force giving the victim reason to fear or expect immediate bodily harm....

Claxton Middle School 2006-2007 Student Handbook, p. 46.

A local board of education has the burden of proof when it charges a student with an infraction of its rules. *Scott G. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1988-26 (Ga. SBE, Sep. 12, 1988). The school system did not present any evidence that the Student violated the Local Board's Rule 1. The rule requires some act that disrupts the functioning of the school. There was no showing that the operation of the school was disrupted in any manner because the two students were discussing a list of names that was considered offensive by the school administrators.

The Local Board argues that the Student's conduct over a period of time was disruptive because the Student was making racial slurs against other students. The charge letter issued to the Student, however, did not mention any course of conduct. The school system did not charge the Student with any violation until he was found with the list so he was never put on notice that his prior conduct was in issue. Since the finding of the list of names was what precipitated the charges against the Student, it is only the possession of the list that can reasonably be deemed the conduct that constituted a violation of the Local Board's policies. The Student's prior conduct, while offensive, did not result in any disciplinary action at the time and cannot, therefore, now serve as the basis for claiming that the Student's acts were disruptive. The State Board of Education, therefore, concludes that the school system did not carry its burden of proof that the Student created a disruption in the school.

The Local Board's Rule 24 requires some form of disparaging conduct towards another person or a disparaging communication to another person. In the instant case, the school system did not produce any evidence that the Student's creation of a list of first names headed with the letters "KKK" constituted disparaging conduct towards, or a disparaging communication to, another person. The list was not distributed or communicated to anyone but was taken up by a teacher while the Student and his friend, who helped him prepare the list, were looking at the list. There was no evidence that the Student made anyone aware of the list. The State Board of Education, therefore, concludes that the school system failed to carry its burden of proof that the Student violated Rule 24.

Additionally, the Student's right of due process was violated by not receiving reasonable notice of the disciplinary tribunal. The Student raised the issue of defective notice both at the disciplinary tribunal and on his appeal to the Local Board. The Local Board was required by law to serve the Student and his guardian with notice that "include[s] a statement of the time, place, and nature of

the hearing; a short and plain statement of the matters asserted; and a statement as to the right of all parties to present evidence and to be represented by legal counsel.” O.C.G.A. § 20-2-754(b)(1). The notice in this case was deficient for two reasons. First, the record shows that the notice merely stated that the Student violated the rules, without identifying any times or conduct that constituted a violation. The Student, therefore, was not put in a position of being able to defend against the charges. *See, Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993). The second reason the notice was defective is because it was not delivered to the Student before the hearing. The Local Board argues that since the notice was mailed on April 3, 2007, the notice was properly addressed, and the notice contained sufficient postage, then the notice was effective as of its mailing. In Georgia, mailing a notice that is properly addressed with correct postage creates a rebuttable presumption of receipt. *See Crenshaw v. Georgia Underwriting Association*, 202 Ga. App. 610, 414 S.E.2d 915 (1992), O.C.G.A. § 24-4-20, 24-4-21. In this case, however, the evidence shows that the notice was not delivered until eight days after the tribunal hearing was held, thus rebutting the presumption of proper delivery. The State Board of Education, therefore, concludes that the Local Board violated the Student’s right of due process by failing to provide reasonable notice of the disciplinary tribunal.

Based upon the foregoing, it is the opinion of the State Board of Education that the school system failed to carry the burden of proof that the Student violated any of its rules. In addition, the school system denied the Student due process by not giving him adequate notice. Accordingly, the Local Board’s decision is REVERSED.

This _____ day of September 2007.

William Bradley Bryant
Vice Chairman for Appeals