

STATE BOARD OF EDUCATION

STATE OF GEORGIA

M. P.,	:	
	:	
Appellant,	:	
	:	CASE NO. 2008-67
vs.	:	
	:	
SAVANNAH-CHATHAM COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by M. P. (Student) from a decision by the Savannah-Chatham County Board of Education (Local Board) not only to uphold the decision of a student disciplinary officer to expel her, but also to increase the period of expulsion from September 2008 until January 2009. The Student was found guilty of fighting in a classroom and striking a teacher. The Student claims she is being punished for exercising her right to appeal the decision of the disciplinary tribunal, and that the hearing officer denied her due process by not letting her fully question a witness. The decision of the Local Board is remanded for the Local Board to enter a new decision.

On January 17, 2008, the Student and another female student began fighting in a classroom. A teacher stepped between the two students to break up the fight and both students struck him before they were separated. The Student was charged with disrupting the orderly operation of the school, causing a substantial disruption of the school environment, assault and battery, and verbal and physical assault. A student disciplinary hearing was held to hear the charges. The hearing officer found the Student guilty of the charges and expelled the Student until September 2008. The Student appealed the hearing officer's decision to the Local Board. The Local Board increased the expulsion period until January 2009 without providing any explanation of the reason for the increase in the punishment. The Student then appealed to the State Board of Education.

The Student claims that she did not intend to hit the teacher, that she was denied due process because the hearing officer stopped the questioning of a witness, the Local Board improperly increased the period of expulsion, and the decision was too harsh because the other student was permitted to return to school in September 2008.

The Student claims she was trying to strike the other student and not hit the teacher. The question is not whether the Student intended to make contact with the teacher, but whether she intended to hit anyone. The record shows that the Student tried to hit the other student after they engaged in an argument in the classroom and she

admitted that she was trying to hit the other student. The State Board of Education concludes that the claim of a lack of intent is of no merit in this situation.

The Student claims she was denied due process because she was unable to complete her questioning of a witness. The record, however, does not support the Student's argument. The hearing officer allowed the Student to question the witnesses that appeared at the hearing and the Student did not voice any concerns about the conduct of the hearing. The State Board of Education, therefore, concludes that the Student's claim of being unable to question a witness is without merit.

The Student next claims that the Local Board improperly increased the period of expulsion. The State Board of Education has consistently held that a local board of education cannot increase a student's punishment when a student appeals the decision of a tribunal without an explanation. "If an individual will receive additional punishment because of an appeal, then the right of appeal effectively does not exist." *Jack S. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1991-10 (Ga. SBE, June 13, 1991). "A local board of education cannot impose a more severe punishment in the absence of an explanation for the harsher punishment." *Chauncey Z. v. Cobb Cnty. Bd. of Educ.*, Case No. 1992-42 (Ga. SBE, Mar. 11, 1993). *See also, Ryan B. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1995-24 (Ga. SBE, Aug. 10, 1995). In *Georgia Real Estate Commission et al. v. Horne*, 141 Ga. App. 226, 232, 233 S.E.2d 16, 20 (1977), the Court of Appeals explained that the reason for the rule is that the possibility of vindictiveness is too great without an explanation that can be reviewed so that due process requires an explanation. In the instant case, the Local Board increased the period of expulsion without any explanation. The State Board of Education, therefore, concludes that the Local Board denied the Student due process in increasing the period of expulsion without any reason.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board denied the Student due process. Accordingly, the Local Board's decision is remanded, with direction that the Local Board enter a new decision, and, should it ultimately decide to increase the punishment imposed by the disciplinary tribunal, that it clearly set out adequate reasons for the increased punishment.

This _____ day of August 2008.

William Bradley Bryant
Vice Chairman for Appeals