STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. P.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2008-73**
	:	
JASPER COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by J. P. (Student) from a decision by the Jasper County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to assign him to an alternative school until the end of the first semester of the 2008-2009 school year after finding him guilty of causing bodily injury to another student. The Student claims he was denied due process, there was no evidence that he caused any bodily injury to another student, the decision was based upon hearsay evidence, and the punishment was too harsh. The Local Board's decision is sustained.

On April 25, 2008, the Student was involved in an altercation with a female student at a water fountain. The Student struck the female student in the face despite being restrained by a teacher. The Student was charged with committing battery against another person.

On April 28, 2008, the Student was suspended for ten days pending a hearing on the charge of committing battery. A hearing before a student disciplinary tribunal was scheduled for 9:00 o'clock a.m. on May 8, 2008. The school system notified the Student that if he was to be represented by an attorney, the school system had to be notified 24 hours in advance of the hearing so the school system could have an attorney available to represent its interests. On May 7, 2008, the Student's attorney notified the Local Superintendent that he was representing the Student. Although there is some dispute regarding the time the Student's attorney notified the school system, the notice came less than 24 hours before the hearing was scheduled. The school system's attorney was unable to be present the next morning so the school system attempted to reschedule the hearing on May 12, 2008, but the Student's attorney was unavailable. The hearing was then rescheduled, and held, on May 15, 2008. At the end of the Student's 10-day suspension on May 8, 2008, the Student was assigned to in-school suspension until the hearing was held.

The Student was initially given notice that the only witness who would appear for the school system would be an assistant principal. On May 12, 2008, the Local

Superintendent mailed another letter, which listed the names of two more witnesses, to the parents of the Student despite the fact that the school system was aware an attorney represented the Student. The Student's attorney became aware of the new witnesses on the morning of the hearing. Over the Student's objection, the new witnesses were allowed to testify at the hearing.

The student disciplinary tribunal found the Student guilty of committing battery against another person and assigned him to an alternative school through the end of the first semester of the 2008-2009 school year. The Local Board upheld the tribunal's decision and the Student then appealed to the State Board of Education.

On appeal, the Student claims that he was denied procedural due process because the hearing was not held within ten days. He claims that O.C.G.A. § 20-2-754(b)(2) required the hearing to be held within ten days unless he agreed otherwise, and he did not agree to an extension. O.C.G.A. § 20-2-754(b)(2), however, provides that the tribunal shall ensure that the "hearing is held no later than ten school days after the beginning of the suspension unless the school system and parents or guardians mutually agree to an extension...." (Emphasis added). The Student has incorrectly looked at calendar days when the law says school days. An examination of the calendar shows that the tenth school day after April 28, 2008, fell on May 12, 2008. The school system attempted to reschedule the hearing on May 12, 2008, but the Student's attorney was unavailable. Thus, while the Student may not have agreed to hold the hearing more than ten days after the suspension began, the delay cannot be attributed to any fault by the school system. The Student was responsible for the delay. The State Board of Education concludes that the Student's claim that he was denied due process because the hearing was held more than ten school days after the suspension began is without merit.

The Student also claims that he was denied due process because his attorney did not receive notice about two additional witnesses until the day of the hearing. The updated witness list, however, was hand-delivered to the Student's parents on May 12, 2008, three days before the hearing began. The Local Board argues that notice does not have to be given to a student's attorney when notice is actually given to a student, citing *J. F. v. DeKalb Cnty. Bd. of Educ.*, Case No. 2004-06 (Ga. SBE, Oct. 9, 2003). We do not deem *J. F.* to be applicable in the instant case because it concerned notice of the decision of a tribunal and not a list of witnesses, but there was the observation that there is no requirement in law to provide notice of the decision of a tribunal to the attorney representing a student. While the better course of action may have been to deliver notice to the attorney because the school system was aware of the attorney's involvement and had been requested to direct all correspondence to the attorney, the Student nevertheless received actual notice in advance of the hearing and should have notified the attorney when the notice was hand delivered. The State Board of Education concludes that the Local Board did not deny him due process because his attorney was unaware of two additional witnesses until the morning of the hearing.

The Student claims that the tribunal was biased because the Local Board's attorney served as the hearing officer. In *Holley v. Seminole County School District*, 755

F.2d 1492 (11th Cir., 1985), the Court held that service by a local board's attorney as a hearing officer did not violate a teacher's due process. The holding in *Holley* is also applicable to a student hearing. The State Board of Education, therefore, concludes that the Local Board did not deny the Student due process because its attorney served as the hearing officer.

The Student claims that the only evidence against him was hearsay evidence. The record, however, shows that a teacher who witnessed the incident testified directly. Such testimony was not hearsay evidence. The Student's claim, therefore, is not supported by the record.

The Student also claims that there was no evidence that the other student was injured. "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 evidence that the Student twice struck the female student's head. It was unnecessary to show that the blows caused any open wounds. The tribunal could conclude that the receipt of a blow to the head constituted an injury.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Student was not denied due process and that there was evidence to support the decision of the Local Board. The Local Board's decision, therefore, is
SUSTAINED.

This _____ day of September 2008.

_____
William Bradley Bryant
Vice Chairman for Appeals