

STATE BOARD OF EDUCATION

STATE OF GEORGIA

EDWARD H.,)
Appellant,)
v.) CASE NO. 1985-25
DEKALB COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

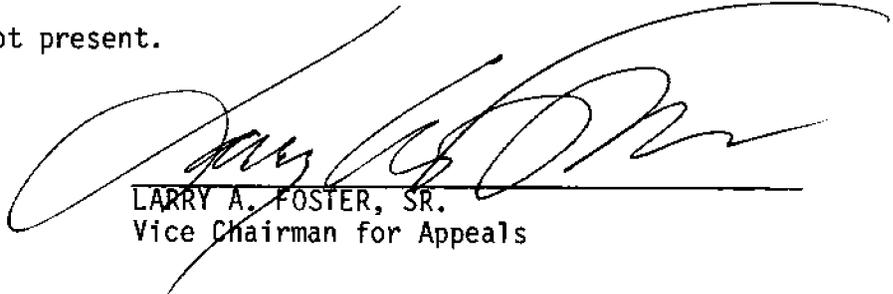
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the DeKalb County Board of Education herein appealed from is hereby SUSTAINED.

This 10th day of October, 1985.

Mr. Temples was not present.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

EDWARD H.,)	
)	
Appellant,)	
)	CASE NO. 1985-25
v.)	
)	
DEKALB COUNTY BOARD)	
OF EDUCATION,)	
)	REPORT OF STATE
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Edward H. (hereinafter "Student") from a decision of the DeKalb County Board of Education (hereinafter "Local Board") expelling the Student from the regular classes of the Local Board through the fall quarter of 1985-86 but allowing the Student to attend the Local Board's alternative school. The Student contends on appeal that he was denied due process. The Local Board contends that it provided constitutional protections in excess of those required to be provided. The State Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

On April 23, 1985, Appellant was involved in an altercation with another Student (hereinafter "Student 2") in a school hallway between classes. He was notified by letter dated May 1, 1985 that

he was not to return to school until a formal hearing could be held and that the hearing was set for May 8, 1985. A hearing was held on May 8, 1985 before the Student Evidentiary Committee. On May 9, 1985, the Student Evidentiary Committee ruled that the Student would be expelled from all regular units of the DeKalb County School System through the fall quarter of the 1985-86 school year for violation of school rules prohibiting use of objects which may be considered weapons, extreme physical violence, and creating a school disturbance. He was given the option of attending Hamilton Alternative School during the spring and fall quarters. The Student appealed the decision of the Student Evidentiary Committee to the Local Board which found that the Student was not guilty of the weapons allegation but was guilty of extreme physical violence and creating a school disturbance. The Local Board did not change the punishment imposed by the Student Evidentiary Committee.

There was testimony by student witnesses to the effect that the Student had a fight with Student 2 on April 22, 1985, that the Student went out of his way to meet Student 2 on April 23, 1985, and that he fought with Student 2 on April 23, 1985. Student 2 testified that the Student approached him in the hall at the school and came very close. Student 2 pushed the Student away and the Student then hit Student 2. As a result of the fight in the hallway, Student 2 received minor injuries. Student

2 then went to another room and obtained a hammer. Student 2 then struck the Student in the head with the hammer and caused a bleeding injury.

The Assistant Principal investigated the incident and the information he received was substantially the same as the information presented to the Student Evidentiary Committee.

PART III

DISCUSSION

The Student contends on appeal that he was denied his rights to cross-examine and counsel at a Local School hearing conducted on April 25, 1985. These contentions do not warrant reversal because there is no evidence in the record to support the allegations and because Appellant has not demonstrated an entitlement to the rights to which he alleges he is entitled at a Local School hearing. The only information in the record on this argument as to what occurred on April 25, 1985 is in the form of briefs by counsel. These briefs cannot be taken as evidence, especially since they only allude to what occurred and do not actually state the facts. Additionally, even if one assumes that the facts support the arguments by counsel, the Local School hearing was a prelude to a more formal hearing, the Student Evidentiary Committee hearing, where the Student was given these rights.

The Local School hearing is essentially a continuation of the principal's investigation. A student is not subject to

long-term suspension or expulsion as the result of a Local School hearing. The Local School hearing, however, may result in a recommendation of long-term suspension or expulsion, but a Student Evidentiary Hearing Committee hearing, or a Local Board hearing, must be held before such action can be taken. A student is not entitled to the full panoply of procedural rights granted in a criminal setting, especially when the discipline merely amounts to short term suspension. Procedural due process in the school setting where a suspension is involved may require that a student receive notice, have an opportunity to explain, and learn the names of any accusers. It does not, however, include the right to cross-examination and counsel in every instance.

Appellant argues that the rights to cross-examination and counsel inure at that point in time when a possibility of long term suspension arises. Appellant, however, has not cited any authority for this proposition and the State Hearing Officer is unaware of any such authority. The State Hearing Officer, therefore, concludes that the failure to provide for counsel and cross examination at the initial proceeding where only a short term suspension could result did not violate the Student's due process rights.

The Student also contends that error was committed when a witness was allowed to testify at the Student Evidentiary Hearing who had not been named on the witness list provided the Student. The witness testified that she had heard the Student discuss

getting back at Student 2 prior to the fight that occurred on April 23, 1985. While this may have been error, the testimony was merely cumulative and there was substantial other evidence without that testimony to support the decision of the Local Board. The State Hearing Officer, therefore, concludes that, if there was an error in permitting such testimony, it was harmless error which does not require reversal.

The Student also contends that the charges brought were unconstitutionally vague and overly broad. He contends that the rules prohibiting extreme physical violence and causing a substantial disturbance are not sufficiently clear to enable a student to know what conduct is prohibited. Fighting is clearly within the realm of extreme physical violence and is likely to cause disruption of the school environment. The Local Board is not required to specifically list every possible infraction which a high school student should be aware of without significant mental activity.

As part of his argument that the charges are unconstitutionally overbroad and vague, Appellant points out that the DeKalb County School System 1984-85 Student Discipline handbook lists the offense of violence involving actual physical contact (Rule 07) in subparts a and b. Subpart a is headed "Offenses involving extreme physical violence." Subpart b is headed "Fighting, threatening, and/or intimidating another student(s) with violence."

Subpart a provides for short-term suspension to permanent expulsion; subpart b provides for "detention to a recommendation that the Student appear before the Student Evidentiary Hearing Committee for possible permanent expulsion depending on circumstances." Appellant argues that he was involved in a fight, which is listed as a specific offense in subpart b, and the only extreme physical violence which occurred was the hammer blow. He was the unwilling recipient of the hammer blow and had nothing to do with the use of "extreme physical violence." At most, he was involved in a fight, which is covered under subpart b. Because of the vagueness of the rule, he could not know that he would be charged under subpart a rather than subpart b.

Appellant's argument, however, overlooks the fact that the hammer incident was only a part of a continuing process which he initiated by his confrontation of the other student. Additionally, charges under both subpart a and subpart b can lead to the same results -- appearance before the Student Evidentiary Hearing Committee and long-term suspension or expulsion. Appellant, therefore, was informed that his actions could result in his expulsion from school regardless whether subpart a or subpart b was applicable.

The State Hearing Officer, therefore, concludes that the Local Board rules are not unconstitutionally vague and overbroad. Appellant was fairly apprised of the possible consequences of his actions prior to taking them.

PART IV

CONCLUSION

Based upon the foregoing discussion, the record presented, and the brief and argument of counsel, the State Hearing Officer is of the opinion the Local Board did not violate the Student's due process rights, the Local Board's rules are not unconstitutionally vague and overbroad, and there was sufficient evidence to support the decision of the Local Board. The State Hearing Officer, therefore, recommends that the decision of the Local Board be

SUSTAINED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER