

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>L. W.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2000-3</b>
	:	
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by L. W. (Student) from a decision by the Gwinnett County Board of Education to suspend him until January 4, 2000 if he completed 70 hours of community service by January 1, 2000 after a student disciplinary tribunal found him guilty of participating in the beating of another student. The Local Board's decision is sustained.

On October 26, 1999, the Student drove three other students to a bus stop where the other three students attacked another student who had gotten off the bus. The Student was charged with conduct that disrupted and interfered with the school operation, assault, and conduct subversive to good order. A student disciplinary tribunal conducted a hearing on November 11, 1999 and decided to expel the Student until the end of the 1999-2000 school year, with the option of attending an alternative school and returning to regular school on April 17, 2000 if he completed 70 hours of community service. When the Student appealed to the Local Board, the Local Board upheld the tribunal's decision, but changed the punishment to allow the Student to return to regular school on January 4, 2000 if he completed the community service by January 1, 2000. The Student completed his community service and was enrolled back in regular school when he filed an appeal to the State Board of Education.

On appeal, the Student claims he was denied due process because the Local Board failed to provide him with the complete statements made by the students who rode in the Student's car. The Student also claims that his rights under the 5<sup>th</sup> Amendment to the United States Constitution were violated because he was coerced into giving a statement that was used against him. The Student's third claim is that the evidence did not support the charges. The Student's fourth claim is that the sentence was arbitrary, unreasonable, and an abuse of discretion. Finally, the Student claims he was denied the right to confront and examine the witnesses against him because he did not receive all of the statements taken by the administration during its investigation of the incident.

The Student asked for copies of the statements made by the other students who rode in his car. The school system provided him only with redacted copies of the statements and claimed that nothing further could be provided because of the provisions of the Family Educational Right and Privacy Act of 1974, 20 U.S.C. § 1232g (FERPA). The Student claims that the statements are not covered by FERPA and they contained exculpatory evidence that would have aided him in preparing his defense. The statements were not subpoenaed, were not introduced in evidence, and are not a part of the record. Even if the statements contained exculpatory information and are not covered by FERPA, the Local Board was not under any obligation to make the statements available to the Student. The statements were not used in presenting a case against the student and there is no disclosure requirement in civil matters in the absence of discovery. Even in the absence of discovery, the Student had an opportunity to examine and cross-examine the students who made the statements and thus extract any exculpatory evidence that existed. The State Board of Education concludes that the Local Board did not deny the Student due process in withholding the complete statements of the other students in the absence of a subpoena.

The Student next claims that he was denied his rights under the 5<sup>th</sup> Amendment to the Constitution of the United States because a statement was coerced from him and then used against him. The Student claims that he was led to believe that his statement was to be used solely against the other students. There is no indication that the Student's statement was coerced. A student disciplinary tribunal hearing is a civil administrative proceeding. The 5<sup>th</sup> Amendment right to avoid self-incrimination is applicable only in criminal proceedings. Since the tribunal hearing was a civil matter, the Student does not have a valid claim that he was denied any 5<sup>th</sup> Amendment rights.

The Student's next claim is that the evidence did not support the charges. The Student claims that he attempted to talk the other students out of getting into a fight. The evidence, however, shows that the Student drove the car to an unnecessary location and waited for the bus to arrive with the student who was attacked. "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). Since there was some evidence that the Student was actively involved in transporting other students for the purpose of engaging in a beating of another student, the State Board of Education concludes that there was evidence to support the Local Board's decision.

The Student's next claim is that the Local Board's decision was arbitrary and unreasonable and an abuse of discretion because he had not previously been involved in any disciplinary matter. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. *See, Boney*

*v. County Board of Education for Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); *Braceley v. Burke County Bd. of Ed.*, Case No. 1978-7." *Joseph M. v. Jasper Cnty. Bd. of Educ.*, Case No. 1981-40 (Ga. SBE, Feb. 11, 1982). The fact that the Student had a previously unblemished record does not prevent the Local Board from suspending him or indicate that its decision was arbitrary or capricious. *See, S. W. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1998-29 (Ga. SBE, Aug. 13, 1998). The State Board of Education, therefore, concludes that the Local Board's decision was not arbitrary or capricious.

The Student's final claim is that he was denied the right to confront and cross examine all the witnesses because he was not provided the statements taken from all of the students who were interviewed during the investigation of the incident. As previously indicated, the Student did not subpoena any statements and the Local Board was not under any obligation to provide the statements to the Student. The Student was given an opportunity to examine and cross-examine all of the witnesses that appeared at the hearing. The State Board of Education concludes that the Local Board did not deny the Student the right to confront any witnesses.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student any of his rights, there was evidence to support the Local Board's decision, and the decision was not arbitrary or capricious. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_\_ day of May 2000.

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Bruce Jackson  
Vice Chairman for Appeals