

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| E. W. and N. W., | : | |
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| Appellant, | : | |
| | : | |
| vs. | : | CASE NO. 2001-36 |
| | : | |
| HENRY COUNTY | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | DECISION |

This is an appeal by E. W. and N. W. (Students) from a decision by the Henry County Board of Education (Local Board) that found them guilty of violating Rule 13 of Section One of the Henry County Secondary Student Code of Conduct and suspending them from school for five days because they possessed a master key to the school. The Students argue that the Local Board abused its authority because they were never charged with violating Rule 13 of Section One. In addition, the Students claim that the Local Board abused its discretion because it imposed a punishment on them but did not impose any punishment on the son of a Local Board member even though the Local Board member’s son admitted to also having a master key to the school. The Local Board’s decision is reversed.

The Students are active cadets in the Naval Junior Reserve Officers Training Corps (NJROTC) program in the high school. An NJROTC instructor left his key in a door and another cadet took the key and made copies of it. The other cadet then gave each of the Students a copy of the key. The Students’ principal learned that the Students had keys, which they admitted when he asked. The Students claimed they thought the keys were only for the NJROTC department rooms and were unaware the keys were master keys for the high school. The Students were charged with a Section II (#1) offense of “committing any act that would constitute a misdemeanor under the laws of the state of Georgia, more specifically, theft by receiving/being party to theft by taking – being in possession of a stolen SHS master key.”

On February 14, 2001, a disciplinary hearing officer conducted a hearing. After the Students established that they had not stolen the keys they had, the hearing officer said it was immaterial whether their keys were stolen and the Students were guilty if they possessed copies of a stolen key. The hearing officer then found the Students guilty of the charge and suspended them for five days.

The Students appealed to the Local Board and argued that the evidence failed to support the charges because they had not stolen the keys, nor were the keys stolen in the first instance. On February 28, 2001, the Local Board voted to find that the Students violated Section I (#13) of the Henry County Schools Student Handbook, which prohibits “the sale, give-away, barter,

exchange or distribution of any ... materials ... that otherwise would not be a violation of the laws of the State of Georgia without the expressed consent of the principal or the principal's designee." The Local Board allowed the five-day suspension to remain, but permitted the Students to make up their grades during the time they were suspended. The Students then appealed to the State Board of Education.

On appeal to the State Board of Education, the Students claim that both the hearing officer's decision and the Local Board's decision discriminated against them because the son of a Local Board member also had a key and was not punished. The Student's claim that because of the political influence of the Local Board member, they have been subjected to a double standard.

The Students raised the issue before the Local Board, but there is no indication that the Local Board considered the issue, nor is there any evidence that the Local Board member's son had a key. The State Board of Education can only consider evidence that was presented in the initial hearing and cannot review any evidence presented outside the initial hearing. If evidence existed that the students received disparate treatment based upon the political influence of their parents then the Local Board would be subject to a gross abuse of discretion challenge. In the absence of such evidence, however, the State Board of Education must conclude that it cannot review the Student's claim of disparate treatment.

The Students also claim that the disciplinary hearing officer was biased because she met with and discussed the case before the hearing with the NJROTC instructor whose key was initially taken. There is, however, no evidence of such a meeting in the record. Just as with the disparate treatment claim, the State Board of Education cannot consider any evidence that was not presented at the initial hearing. The State Board of Education, therefore, concludes that the Students' claim of bias on the part of the hearing officer cannot be considered on appeal.

The Students next claim that the hearing officer's decision was erroneous because the school system failed to prove that they were in possession of a stolen key. The charge against them was that they committed the misdemeanor act of "theft by receiving/being party to theft by taking – being in possession of a stolen SHS master key." 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). There was no evidence presented at the hearing that the Students possessed stolen keys. The hearing officer focused on the fact that the Students had unauthorized copies of a master key and erroneously concluded that such possession satisfied the charge of theft. The State Board of Education, therefore, concludes that the school system failed to satisfy its burden of proof and the hearing officer improperly found the Students guilty.

The Local Board apparently also concluded that the hearing officer improperly found the Students guilty of committing a Section II-1 offense because the Local Board found the Students guilty of committing a Section I-13 offense instead of a Section II-1 offense. The Students, however, claim that it was error for the Local Board to find them guilty of a Section I-13 offense since they were never charged with a Section I-13 offense.

O.C.G.A. § 20-2-754(b) requires a school system to provide a student charged with an infraction with reasonable notice that contains “a short and plain statement of the matters asserted....” “One of the main reasons for requiring notice is to permit the accused to prepare a defense. To prepare a defense, the accused needs to know the rule or rules allegedly violated, the date, time, and place the offense occurred, and the act or actions that result in an offense to the rule or rules.” *Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993). It follows that a student cannot be found guilty of an offense for which the student has not been charged. As previously set forth, the Students were charged with a Section II-1 offense and were never charged with violating Section I-13, and they conducted their defense accordingly. Since the Students were not charged with violating Section I-13, the State Board of Education concludes that the Local Board exceeded its authority in finding the Students guilty of violating Section I-13.

In addition to improperly finding that the Students violated Section I-13, the punishment imposed by the Local Board exceeded its own rules, which provided for placement in the “In-House Education Program” for two school days for the first violation of Section I. Henry County Schools Student Handbook, Section I – Offenses and Punishments.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to carry its burden of proof, failed to give the Students proper notice, and arbitrarily and capriciously imposed a longer punishment than provided in its own rules. Accordingly, the Local Board’s decision is REVERSED.

This _____ day of June 2001.

Bruce Jackson
Vice Chairman for Appeals