STATE BOARD OF EDUCATION

STATE OF GEORGIA

V. N.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2003-22**
	:	
PIERCE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by V. N. (Student) from a decision by the Pierce County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to permanently expel her after finding that she kicked her principal. The Student claims that the decision is too harsh because she reacted in self-defense, the tribunal was biased, the school system failed to provide her with proper counseling, and the decision violates the Individuals With Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (IDEA). The Local Board's decision is sustained.

On September 16, 2002, the Student began cursing some other students in the lunchroom. The Student's principal overheard the commotion and asked the Student to accompany him to his office. Initially, the Student refused to leave the scene, but she then exited the lunchroom with the principal when the principal took her by the arm and guided her out. After exiting the lunchroom proper, the Student turned on the principal and kicked him in the groin and in the leg. An assistant principal had to assist the principal in restraining the Student until she calmed down. The principal called the police and the police escorted the Student out of the school. The Student claimed that the principal broke her arm during the struggle. The school system charged the Student with battery and referred the matter to a student disciplinary tribunal.

A three-member student disciplinary tribunal conducted a hearing under the provisions of O.C.G.A. § 20-2-754. The tribunal hearing officer was an assistant superintendent who had met with the Student's mother after the incident and said he did not think the principal would break the Student's arm. One of the tribunal members was a counselor who, the Student claimed, had not provided the Student with counseling after she was allegedly raped by her stepfather. At the beginning of the hearing, the Student moved to dismiss the proceedings because of the alleged bias of these two individuals. The Student's motion was denied and the hearing proceeded.

After hearing the evidence, the tribunal found the Student guilty of committing battery against the principal. The tribunal then voted to recommend permanent expulsion

after reviewing the Student's disciplinary record and hearing recommendations from the school system. The Local Board adopted the tribunal's recommendation when the Student appealed. The Student then appealed to the State Board of Education.

On appeal, the Student claims that (1) she was denied due process because the disciplinary tribunal and the hearing officer were biased, (2) she did not receive proper notice of the charges, (3) the Local Board's decision is illegal under the provisions of IDEA, (4) she acted in self-defense, and (5) the punishment is excessive because there were no weapons involved and the acts were not planned.

The Student's only evidence of bias on the part of the hearing officer was that the hearing officer ruled against some of the motions made by the Student's attorney and the hearing officer's statement shortly after the incident that he did not think the principal would have broken the Student's arm. Neither of these contentions shows or establishes any bias against the Student by the hearing officer. The Student has not shown that the rulings were erroneous, or that the expression of incredulity that an administrator had broken a student's arm shows any bias.

The Student also claims that one of the tribunal members was biased because the tribunal member did not provide her with any counseling after she was allegedly raped. The thrust of the Student's argument is that the school system had an affirmative duty to provide counseling even though she had not asked for any counseling. The Student claims that such a duty arises under IDEA because she is a disabled child since she was raped. IDEA, however, requires a student to be identified as disabled before services are provided, and any services to be provided have to be identified by an individualized education program committee before they are provided. There was no evidence in the instant case that the Student has ever been identified as disabled, or that any request was ever made to have her identified as disabled. The school system, therefore, did not have an affirmative duty to provide the Student any counseling. The Student also failed to show that the counselor was biased in any degree. The State Board of Education concludes that the Student was not denied due process because of the makeup of the tribunal.

The Student next claims that she did not receive proper notice of the charges because the charging letter did not identify the date of the incident, who the battery was committed against, or who would be the witnesses. O.C.G.A. § 20-2-754 provides:

> (1).... This notice ... shall include a statement of the time, place, and nature of the hearing; a short and plain statement of the matters asserted; and a statement as to the right of all parties to present evidence and to be represented by legal counsel.

O.C.G.A. § 20-2-754(b)(1).

The Local Board argues that its notice letter set forth all of the elements required by O.C.G.A. § 20-2-754. The only shortfall in the notice letter was in the

"short and plain statement of the matters asserted." The notice letter merely stated that the Student was charged with battery. There was no notice about when or where the battery occurred, or whom the battery was committed against.

The standard the State Board of Education has followed to determine whether a notice is adequate has been whether the charge letter permits the student to present an effective defense against the charges. *See, Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993); *R. C. S. v. Baldwin Cnty. Bd. of Educ.*, Case No. 1994-5 (Ga. SBE, Apr. 14, 1994. In the instant case, the charge of battery is specific and the Student was able to present an effective defense. Since only one battery occurred, she did not have to make any guesses about what activity she had to defend against. The State Board of Education, therefore, concludes that the notice complied in all respects with the requirements of O.C.G.A. §20-2-754(b).

The Student also claims that the Local Board's decision was illegal because it violates the provisions of IDEA. As previously pointed out above, however, the Student has never been identified as a disabled student. She cannot, therefore, obtain any of the benefits afforded by IDEA, e.g., to remain in school if her behavior was caused by a disability. The State Board of Education, therefore, concludes that the Local Board's decision did not violate the provisions of IDEA.

The Student next claims that she acted in self-defense and the punishment is too harsh. Whether the Student acted in self-defense, and what weight to attach to such a finding, is the province of the trier of fact. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). In deciding on the level of discipline, the State Board of Education cannot adjust the level or degree of discipline imposed by a local board of education. *See, B. K. v. Bartow Cnty. Bd. of Educ.,* Case No. 1998-33 (Ga. SBE, Sep. 10, 1998). Thus, it was up to the tribunal to decide whether the Student acted in self-defense and to take into consideration her claims of self-defense, as a factor, in deciding the degree of discipline imposed. "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). Here, there was evidence that the Student kicked the principal in the groin and in the leg while he tried to escort her to his office.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board acted within its authority and did not deny the Student any due process rights. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of March 2003.

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Wanda Barrs
Chairperson, State Board of Education