

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>K. H.,</b>	:	
	:	
<b>Appellant,</b>	:	<b>CASE NO. 2011-07</b>
	:	
<b>vs.</b>	:	
	:	
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by K. H. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until April 28, 2011, with the option of attending an alternative school during the period of expulsion, after finding him guilty of participating in a food fight in the school cafeteria. Appellant claims that he was selectively punished, the punishment was too harsh, and the punishment was against his educational interests. The Local Board’s decision is SUSTAINED.

On April 1, 2010, a food fight erupted in the cafeteria of the high school the Student attended. Four video cameras in the cafeteria recorded the incident. The cafeteria was evacuated and students were sent to their rooms where they were served lunch. The incident created a major disruption in the school as schedules had to be changed and the cafeteria had to be cleaned.

School administrators reviewed the video recordings as part of their investigation of the incident. Although there were approximately 700 students in the cafeteria when the fight started, the administrators were able to identify only four students who were involved in throwing food. One of the four was the Student, who was charged with causing a school disruption and disorderly conduct.

At the student disciplinary tribunal hearing, an assistant principal testified and showed the video recordings. The assistant principal testified that the Student admitted he threw something during the fight after someone threw something at him. The Student denied that he admitted to throwing anything. The assistant principal also testified that the video recording shows Appellant throwing something.<sup>1</sup> The tribunal found the Student guilty of the charges and expelled him for until April 28, 2011, with the option of attending an alternative school during the period of expulsion. The Local Board upheld

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<sup>1</sup> It is difficult to determine from the video recording alone that the Student actually threw an object.

the tribunal's decision when the Student appealed and the Student then filed an appeal to the State Board of Education.

On appeal, the Student claims that he was denied due process because other students involved in the fight were not disciplined. He also claims that a one-year expulsion is too harsh. Finally, the Student claims that a one-year suspension is against his educational interests.

"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). "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). The State Board of Education ... cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998).

In the instant case, there was direct evidence that the Student threw something during the fight. Although his story did not agree with the testimony of the assistant principal, the tribunal had to decide which testimony to believe. In this instance, the tribunal chose to believe the assistant principal's testimony that the Student admitted he threw something. There was, therefore, evidence to support the Local Board's decision.

The fact that other students in the cafeteria may have thrown food items and were not punished does not amount to a deprivation of the Student's due process or equal protection rights. The assistant principal testified that they were able to identify only four students throwing articles. To punish a student, the administrators had to be able to see who was throwing something and then be able to identify who it was doing the throwing. Thus, while other students threw items during the fight, the administrators could not identify them and they were unable to obtain any names of students who participated in the fight. The inability of the administrators to identify other students does not deny the Student any due process rights. The case of *Derricus H. v. Rome City Bd. of Educ.*, Case No. 1994-1 (Ga. SBE, Apr. 14, 1994), cited by the Student, is inapplicable because it involved students who were identifiable but were not punished.

The Student also claims that keeping him out of regular school for one year is against his educational interests. The Student has not cited any law or precedent that establishes that a student has a protected educational interest. The State Board of Education, therefore, concludes that this argument is without merit.

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

This \_\_\_\_\_ day of October 2010.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS