STATE BOARD OF EDUCATION
STATE OF GEORGIA

N.G.,	:	
	:	
Appellant,	:	
	:	**CASE NO.: 2022-07**
v.	:	
	:	**DECISION**
COBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by N.G. ("Student") from the decision of the Cobb County Board of Education ("Local Board") to suspend him for ten (10) days and expel him for the remainder of the 2021-2022 school year with the opportunity to attend alternative school for violating Cobb County School District Rules JCDA-R (High School Student Code of Conduct, Section II, Paragraph A, Subsection 1 (Alcohol/Illegal Drugs/Inhalants) and Paragraph M (Incendiary Devices)).[1] For the following reasons, the decision of the Local Board is hereby **REVERSED and REMANDED WITH INSTRUCTIONS to provide reasonable notice consistent with this decision and a new hearing.**

I. FACTUAL BACKGROUND

The Student was a sophomore at Campbell High School. He received special education services and supports pursuant to the Individuals with Disabilities Education Act.

On September 21, 2021, Dr. Jeff Hutson, an assistant principal at the school, was monitoring the student bathrooms in the cafeteria. He saw a student come out of a bathroom stall, and a few seconds later, the Student came out of the same stall. Dr. Hutson noticed that the Student had very heavy and glassy eyes and staggered a little when he walked. Dr. Hutson tried to interact with the Student; however, the Student was reluctant. He thought the Student looked high and was under the influence. Dr. Hutson escorted the Student to a front office conference room. Dr. Hutson checked the Student's shoes and bookbag. He found a Bic cigarette lighter in the bookbag. He asked the Student to empty his pockets. The Student turned his left front pocket inside out, but he was hesitant to empty his right pocket. Dr. Hutson saw something sticking out of the Student's right pocket. He told the Student that they were not leaving until the Student removed the item from his pocket. The Student pulled a vape pen from his right pocket.

Dr. Hutson called the school resource officer ("SRO"), Ricci Mason, for assistance. The SRO had been a law enforcement officer in Georgia for 33 years. He was trained to identify persons who were under the influence. The SRO observed that the Student was slumped in the chair and appeared lethargic and almost asleep. The Student's eyes were bloodshot and puffy. His

[1] Hereinafter referred to as "Rules A1 (Alcohol/Illegal Drugs/Inhalants) and M (Incendiary Devices) of the Student Code of Conduct."

speech and reaction time were slow. Based on the SRO's training and experience, the Student appeared to be under the influence. The SRO also observed that the vape contained a thick, molasses-type substance that was typical of THC. His field-test of the substance revealed that it was potentially positive for THC. He sent the substance to the GBI for a state-administered test. The GBI's test results were not available as of the time of the hearing.

II. PROCEDURAL HISTORY

The Student was charged with violating Rules A1 (Alcohol/Illegal Drugs/Inhalants) and M (Incendiary Devices) of the Student Code of Conduct. He was suspended from school for seven (7) days with the recommendation of an additional three-day suspension pending the outcome of a manifestation determination. The manifestation determination was held prior to the disciplinary hearing. It was determined that the Student's conduct was not a manifestation of his disability.

A disciplinary hearing took place on October 7, 2021 before a disciplinary hearing officer. The hearing officer found that the Student violated Rules A1 (Alcohol/Illegal Drugs/Inhalants) and M (Incendiary Devices) of the Student Code of Conduct. During the penalty phase of the hearing, the school principal, Dr. Jeanne Walker, recommended that the Student serve ten (10) days of out-of-school suspension and be expelled for the remainder of the 2021-2022 school year and the first semester of the 2022-2023 school year because this was the Student's second violation of Rule A1 (Alcohol/Illegal Drugs/Inhalants). Dr. Walker also considered the Student's overall disciplinary history in requesting a higher degree of consequence. After hearing testimony from Dr. Walker and the Student's mother as to the appropriate punishment, the hearing officer suspended the Student for ten (10) days and expelled him for the remainder of the 2021-2022 school year with the opportunity to attend the alternative education program (Ombudsman).

The Student appealed the hearing officer's decision to the Local Board. At its meeting on October 28, 2021, the Local Board affirmed the hearing officer's decision.

The Student timely appealed to the State Board of Education ("State Board").

III. STANDARD OF REVIEW

In reviewing this appeal, the State Board must apply the "any evidence rule." Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. *See Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). *See also*, *Chattooga Cnty. Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010). "Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law." *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017). An abuse of discretion occurs "if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence." *Id*.

IV. ISSUES ON APPEAL

The Student raised the following issues on appeal to the State Board:

A. Did the Student receive reasonable notice as required by O.C.G.A. § 20-2-754(b)(1)?
B. Did the Local Board meet its burden of proof?
C. Was the punishment contrary to law?
D. Was the Student's disability taken into account?

V. DECISION

A. Reasonable Notice

The Student contends that the Local Board did not provide sufficiently specific notice as required by O.C.G.A. § 20-2-754(b)(l). In that regard, the charge letter addressed to the Student's mother provided in pertinent part:

> Pursuant to your conference with Administrator Dr. Jeffrey Hutson, on September 21, 2021, [Student] has been suspended for seven (7) days from September 22, 2021 through October 7, 2021, with a recommendation for an additional three (3) school days, pending the outcome of the Manifestation Determination and expulsion for the remainder of the 2021-2022 school year and the first semester 2022-2023 school year and allowed to apply to the Alternative Education Program (Ombudsman) pending the outcome of the Manifestation Determination Review. …
>
> This action resulted from [Student's] violation of Cobb County School District Rule JCDA-R (High School Student Code of Conduct, Section II, Paragraph A, Subsection 1 and Paragraph M), a copy of which is enclosed for your review. On September 21, 2021, this is [Student's] second under influence/possession incident since May 2021.

Further, the school attached the following pertinent rules to the charge letter:

> **II. STUDENT OFFENSES**:
> A student shall not violate any of the following rules of the Cobb County School District. Pursuant to state requirements, disciplinary levels have been assigned to each offense. These levels correspond to the disciplinary levels detailed above. However, principals or designee working in conjunction with Student Support and their appropriate level assistant superintendent may give greater discipline in egregious circumstances, as identified on a case-by-case basis by the severity of the behavior, student's previous discipline history, and other relevant factors.
>
> **A. ALCOHOL/ILLEGAL DRUGS/INHALANTS**:
> 1. No student shall possess, consume, store, or be under any degree of influence of alcoholic beverages (including related products such as "near" beer, non-

alcoholic beer, and non-alcoholic wine coolers), illegal drugs (including, but not limited to narcotics, hallucinogens, amphetamines, barbiturates, marijuana, cannabis oil, or any other substance listed under the Georgia Controlled Substances Act), or any substance believed by the student to be alcohol or an illegal drug. Legal intoxication is not required for violation of this Code of Conduct

- Elementary School – Level 2-3
- Middle and High School – Level 3-5

M. INCENDIARY DEVICES:

No student shall possess, light, and/or discharge smoke bombs, stink bombs, fireworks, cigarette lighters, matches, or similar devices. (Level 1-2)

Georgia law provides: "All parties are afforded an opportunity for a hearing after reasonable notice served personally or by mail. 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)(l). "When a student is charged with some violation that can result in suspension from school, the student has to be given sufficient information to permit the student to defend against the charges." *A.L. v. Columbia Cnty. Bd. of Educ*., Case No. 2020-08 (Ga. SBE, Nov. 2019) (*due process violation where school changed the nature of the charge at the disciplinary hearing*) (quoting *Sherry B. v. DeKalb Cnty. Bd. of Educ*., Case No. 1995-41 (Ga. SBE, Nov. 1995)). *See also, N.M. v. Polk Cnty. Bd. of Educ*., Case No. 2019-15 (Ga. SBE, Feb. 2019); *Damon P. v. Cobb Cnty. Bd. of Educ*., Case No. 1993-9 (Ga. SBE, May 1993). This Board has held that "[o]ne 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. The amount of information needed to prepare a defense depends on the specificity of the rule involved." *Josh G. v. Henry Cnty. Bd. of Educ*., Case No. 1995-39 (Ga. SBE, Sept. 1995) (quoting *Damon P. v. Cobb Cnty. Bd. of Educ*., Case No. 1993-9 (Ga. SBE, May 1993)).

The Local Board argues that notice was sufficient for the Student to prepare an adequate defense. It relies on *J.B. v. Peach Cnty. Bd. of Educ*., Case No. 1998-14 (Ga. SBE, June 1998) to support its position. In *J.B.*, the State Board found that notice was proper where the rule in question was very specific (*use or possession of illegal drugs)*, and the student was questioned about the incident prior to being charged. In reaching its decision, *J.B.* relied upon dicta in *Damon P. v. Cobb Cnty. Bd. of Educ*., Case No. 1993-9 (Ga. SBE, May 1993).

With regard to the specificity of notice, the State Board in *Damon P*. stated in dicta:

> If the rule is specific, e.g., a prohibition against fighting with another student, then identification of the rule, the date, time, and place, may supply substantially all of the information needed to prepare a defense. If, however, the rule or policy is an agglomeration of several rules, then more information is needed about the specific acts and specific rules before an accused can prepare an effective defense. For example, to tell someone they violated the Internal Revenue Code when they filed

> their federal tax return does not permit preparation of an effective defense. Thus, if the rule is specific, a proper defense **may** not require specificity concerning the acts that constitute a violation. If, however, the rule is not specific, then a proper defense requires greater specificity in detailing the acts. (emphasis added)

The State Board in *Damon P*. found that notice to a student who was charged with engaging in gang-related activity was insufficient where the rule covered "an entire spectrum of human activity." *Id*.

In the instant case, the charge letter provided the date of the occurrence and referred to the incident as the second time that the Student was under the influence/possession. The charge letter did not include a plain statement of the matters asserted and the time and place where the offense occurred. Additionally, the letter stated that Dr. Hutson spoke with the Student's mother about the incident on the same day that it occurred. Neither the letter nor the record reflects the substance of that conversation. While the Local Board relies on *J.B.* to support its position that notice was reasonable, Rule A1 (Alcohol/Illegal Drugs/Inhalants) does not have the same level of specificity as the rule in *J.B.* The rationale for the State Board's decision in *J.B.* was based on a distinct set of facts that are distinguishable from the instant case.

The Student was also charged with violating Rule (M) (Incendiary Devices), which prohibits items that run the gamut from smoke bombs to matches. The charge letter provided no information as to what action on the part of the Student allegedly violated Rule M or what incendiary device was involved.

In addition to statutory notice requirements, the Local Board's policies also require that notice include "[a] brief statement of the act(s) student is alleged to have committed, along with a copy of the Code of Conduct allegedly violated." Administrative Rule JCEB-R, C(1)(a)(1). The charge letter fails to meet the standard that the Local Board set regarding notice.

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Baker v. Clayton Cnty. Bd. of Educ*., Case No. 2019-05 (Ga. SBE, Dec. 2018) (quoting *Mullane v. Central Hanover Bank & Trust Co*., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950)). "Mere vagaries or generalities are insufficient, and the notice must be sufficiently specific and detailed to convey to the [Student] the substantial nature of the charge without requiring speculation on his part as to the precise complaint he must answer." *N.M. v. Polk Cnty. Bd. of Educ*., Case No. 2019-15 (Ga. SBE, Feb. 2019) (quoting *Swafford v. Dade Cnty. Bd. of Comm'rs*, 266 Ga. 646, 648 (5), 469 S.E.2d 666, 668 (5) (1996)).

The Student was charged with violating Rules A1 (Alcohol/Illegal Drugs/Inhalants) and M (Incendiary Devices) of the Student Code of Conduct. The State Board finds that the Local Board failed to provide reasonable notice of the charges as required by O.C.G.A. § 20-2-754(b)(l) and the Local Board's policies. As a result, the State Board further finds that the Student's right to procedural due process was violated.

B. Burden of Proof

The Student contends that the Local Board failed to prove that he violated Rule A1 (Alcohol/Illegal Drugs/Inhalants).[2]

The State Board has previously held that, "[a] local board of education has the burden of proof when it charges a student with an infraction of its rules." *B.F. v. Evans Cnty. Bd. of Educ*., Case No. 2007-63 (Ga. SBE, Sept. 2007). "To meet this burden, a local board of education must first prove the contents of the relevant rules and then offer probative and admissible evidence that the accused student has violated the rules. If there is any evidence supporting the decision of the local board of education, the State Board must affirm the decision." *G.V. v. Forsyth Cnty. Bd. of Educ*., Case No. 2018-39 (Ga. SBE, Dec. 2018).

The State Board has affirmed decisions where persons were found guilty of being under the influence of drugs or alcohol. *See J.T v. Henry Cnty. Bd. of Educ*., Case No. 2014-40 (Ga. SBE, June 2014) (*The Student admitted to smoking marijuana, being high, and trippin' sparkles.*); *Johnson v. Fulton Cnty. Bd. of Educ*., Case No. 2012-12 (Ga. SBE, Jan. 2012) (*Teacher smelled like alcohol and was loud, erratic, antsy, and animated.*); *C.W. v. Walker Cnty. Bd. of Educ*., Case No. 2004-42 (Ga. SBE, July 2004) (*The Student was belligerent, disruptive, and had a positive drug test.*).

In the present case, Dr. Hutson testified that the Student had very heavy and glassy eyes and staggered a little when he walked. The SRO had specific training and experience in identifying persons who were under the influence. He testified that the Student was slumped in the chair and appeared lethargic and almost asleep. The Student's eyes were bloodshot and puffy. Both Dr. Hutson and the SRO testified that the Student was under the influence.[3] Further, the Student was in possession of a vape pen that contained a substance that looked like THC and that tested potentially positive for THC.

In reviewing this appeal, the State Board must apply the "any evidence rule." Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. *See Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). *See also*, *Chattooga Cnty. Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010). "Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law." *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017). An abuse of discretion occurs "'if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence.'" *Id*.

In this case, the Local Board met its burden of proof. The State Board finds that the decision was supported by the record. Therefore, under the "any evidence" rule, this Board must affirm the Local Board's decision.

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[2] The Student was also found guilty of violating Rule M (Incendiary Devices); however, he does not contend that the Local Board failed to meet its burden of proof as to this Rule.

[3] Legal intoxication is not required for a violation of Rule A1.

C. Punishment

The Student contends that his punishment was contrary O.C.G.A. § 20-2-735. The Local Board argues that progressive discipline policies were followed, and the Student's punishment was appropriate.

Based on the charges and the Student's disciplinary history, the school recommended that the Student serve ten (10) days of out-of-school suspension and expulsion for the remainder of the 2021-2022 school year and the first semester of the 2022-2023 school year. During the penalty phase of the hearing, the school presented evidence of the Student's grades, attendance report, and disciplinary history, which included May 2021 charges for violating Rules A1 (Alcohol/Illegal Drugs/Inhalants), B4 (Leaving Campus without Permission), and M (Incendiary Devices). The Student served ten (10) days out-of-school suspension for those offenses. With regard to the current charges, the hearing officer imposed a lesser punishment than the school recommended. He suspended the Student for ten (10) days and expelled him for the remainder of the 2021-2022 school year with the opportunity to attend the Alternative Educators Program (Ombudsman). The Local Board affirmed the hearing officer's decision.

The Student contends that his punishment was inconsistent with the requirements for progressive discipline under O.C.G.A. § 20-2-735(d).

O.C.G.A. § 20-2-735(d) states:

> Progressive discipline processes developed pursuant to this subpart shall be designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.

The Student first violated Rules A1 (Alcohol/Illegal Drugs/Inhalants) and M (Incendiary Devices) in May of the 2020-2021 school year, for which he served a short-term suspension. Four months later, he was charged with the same rule violations. The school recommended an enhanced punishment for the second violation of these rules. The Student has not shown that the Local Board failed to follow any progressive discipline processes.

The Student argues that he should have been offered the opportunity to participate in the Gaining Results in Intervention and Prevention (GRIP) program as an intervention strategy. The Local Board responds that GRIP is typically offered for a Student's first violation of Rule A1 (Alcohol/Illegal Drugs/Inhalants). Since this was the Student's second offense, he was ineligible for the program.

The State Board has held that "[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." *Joseph M. v. Jasper Cnty. Bd. of Educ.*, Case No. 1981-40 (Ga. SBE, Feb. 1982). *See also, A.M. v. Gwinnett*

Cnty. Bd. of Educ., Case No. 2003-05 (Ga. SBE, Oct. 2002) (citing *Boney v. Cnty. Bd. of Educ. for Telfair Cnty*., 203 Ga. 152, 45 S. E. 2d 442 (1947)). Moreover, "[t]he 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. 1998).

The Student has made no showing that the punishment was arbitrary, capricious, or otherwise contrary to school policy or the law. Thus, the punishment imposed by the Local Board will not be disturbed.

D. Disability

Finally, the Student raises additional arguments based on his disability. *In Ervin Mitchell v. DeKalb Cnty. Bd. of Educ*., Case No. 2010-04 (Ga. SBE, Sept. 2009), this Board held that:

> Under the provisions of O.C.G.A. § 20-2-1160, the State Board of Education only has jurisdiction to review decisions of local boards of education concerning "the construction or administration of the school law". O.C.G.A. § 20-2-1160(a). ... Since Section 504 [and the Individuals With Disabilities Education Act] [do] not involve school law, the State Board does not have any special expertise in deciding any issues arising under Section 504 [or the Individuals With Disabilities Education Act], nor does it have any jurisdiction to decide such issues. *See, e.g*., *Servicemaster Mgmt. Serv. Corp. v. Cherokee Cnty. School System*, 257 Ga. 60, 354 S.E.2d 424 (1987). Having no jurisdiction over alleged violations of Section 504 [or the Individuals With Disabilities Education Act], this Board will not address them in this appeal.

VI. CONCLUSION

For the foregoing reasons, the State Board finds that the Local Board met its burden of proof as to the charges against the Student and that the punishment was not contrary to law or school policy. The State Board further finds, however, that the Student did not receive reasonable notice as required by O.C.G.A. § 20-2-754(b)(l) and the Local Board's policy. Therefore, the State Board **REVERSES** the decision of the Local Board and **REMANDS with INSTRUCTIONS** to provide the Student with reasonable notice consistent with this decision and a new hearing.

This 12th day of May, 2022.

LEONTE BENTON
VICE CHAIR FOR APPEALS