STATE BOARD OF EDUCATION
STATE OF GEORGIA

I.Y.,	:	
	:	
Appellant,	:	
	:	**CASE NO.: 2023-37**
v.	:	
	:	**DECISION**
POLK COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by I.Y. ("Student") from the decision of the Polk County Board of Education ("Local Board") to assign him to alternative school for the remainder of high school for committing the offense of Threat/Intimidation in violation of the Polk County Student Code of Conduct ("Code of Conduct"). For the following reasons, the decision of the Local Board is hereby **AFFIRMED**.

I. FACTUAL BACKGROUND

During the 2022-2023 school year, the Student was in the ninth grade at Rockmart High School ("RHS"). During first period band class, the Student and classmates, D.Y., A.C., and B.J., were talking, joking, and generally having fun. At least one of the boys commented that the Student's glasses resembled those worn by the serial killer, Jeffrey Dahmer. The group laughed. Then the Student said that he was going to kill D.Y., A.C., and B.J. He pointed at each of them and stated the order in which he would kill them. Another student, S.W., was nearby. The testimony of D.Y., A.C., and B.J. differed as to whether the Student stated that he was also going to kill S.W. The Student made no physical contact with his classmates. He did not state how he would kill them. He did not mention the use of firearms or any other weapon.

D.Y. testified that he thought the Student may have gotten mad over the reference to his glasses. D.Y. further testified that, after the Student made the comment about killing them, "We was all like whoa, whoa, whoa, you shouldn't say that and he was like I'm just joking around and we all just laughing at it and we just forgot about it and went on with our day." D.Y. did not report the Student's comments because he thought that the Student was joking. He did not think that the Student was serious at all.

A.C. testified that he thought the Student's statement was an empty threat and that nothing would come of it. A.C. further described his feelings about the Student's statement: "It was a mix because I didn't feel, I've never felt like [Student] was really a threat but it's just a little creepy with everything that's been going on in the news and he's just been, a wildcard all year is the best I would explain it, like he will come in and say my name like [A.C.], and give me a hug and then try and get in a fight with somebody, so it's just hard to know what's going to happen." A.C. told

his mother about the incident when he got home from school. The record does not reflect whether A.C. told her about the incident because he was afraid or for some other purpose.

B.J. testified that he felt afraid after the Student's statement because the Student previously mentioned that he had guns for hunting. B.J. did not report the incident to a teacher or administrator.

A.C.'s parents reported the incident to the RHS principal. Thereafter, the assistant principal, Mr. Blalock ("AP Blaylock"), investigated the matter. He interviewed the Student, who admitted making the threat. The Student explained that he had not taken his medication that morning, which caused him to do stupid things. AP Blaylock confirmed with the school nurse that the Student had received his medication that morning before class.

II. PROCEDURAL HISTORY

The Student was charged with committing the offense of Threat/Intimidation in violation of the Code of Conduct. He was suspended from school pending the outcome of a disciplinary hearing.

The disciplinary hearing took place before a tribunal on January 27, 2023. A disciplinary hearing officer ("DHO") presided over the proceeding. The tribunal found the Student guilty of Threat/Intimidation and accepted RHS' recommendation to assign the Student to alternative school for the remainder of his tenure in high school.[1] Further, at the end of the 2023-2024 school year, RHS administrators will review the Student's educational, behavioral, and attendance records to determine if he will be returned to the regular school environment or remain in alternative school.

The Student appealed the tribunal's decision to the Local Board. At its meeting on February 14, 2023, the Local Board upheld the 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*.

[1] Prior to the disciplinary hearing, the Student moved out of the District. Should the Student return to the District, he will be assigned to the alternative school.

IV. ISSUES ON APPEAL

A. Notice

The Student argues that Polk County School District's ("District") notice lacked sufficient specificity to allow him to prepare a proper defense. The Local Board counters that the Student received adequate notice of the charge against him.

The record shows that the Student did not raise notice as an issue in his appeal to the Local Board. Instead, he first raised the issue in this appeal to the State Board. "As an appellate body, … [the State Board] [is] not authorized to consider matters which had not been raised before the local board." *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 55, 303 S.E.2d 9, 10 (1983). See also, O.C.G.A. § 20-2-1160(e); *M.F. v. Newton Cnty. Bd. of Educ.*, Case No. 2013-16 (Ga. SBE, Feb. 2013). Consequently, the Student cannot now raise notice as an issue in this appeal.

Further, even if the Student had properly raised notice in his appeal to the Local Board, the argument lacks merit.

The notice provided in pertinent part:

> This letter is to inform you that your son/daughter [I.Y.] will be brought before a tribunal appointed by the Polk School District Board of Education for disciplinary action. [I.Y.] has engaged in acts of misconduct that include threats/intimidation.
>
> On January 10, 2023, [I.Y.] threatened three of his classmates during 1st period, approximately 8:45 a.m., by saying that he was going to kill them. He told them the order in which he would kill them. According to the Polk School District Student Handbook, Verbal or written threatening, bullying, cyberbullying, stalking and/or intimidating school employees, other students, or other persons, without actual physical contact is prohibited. Punishment may range from a reprimand to long term suspension and/or assignment to the Alternative School.

Georgia law provides that "[a]ll 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 the 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 notice included a statement of the time, place, and nature of the hearing and a short and plain statement of the matters asserted, as required by O.C.G.A. § 20-2-754(b)(l). Moreover, the letter was clear as to the act or actions that resulted in an offense to the rule or rules. Therefore, the State Board finds that the notice was sufficient enough to allow the Student to prepare a proper defense.

B. Due Process

AP Blalock undertook an investigation of the incident, which included interviewing the Student. The SRO was present and participated in the interview. The Student argues that the interview violated District policy, his Fourth and Fifth Amendment rights, and due process.

The District's policy regarding interviews of students by law enforcement provides as follows:

> **QUESTIONING BY LAW ENFORCEMENT**
>
> No student enrolled in Polk School District shall be questioned by any non-school authority without the knowledge of the school principal or the assistant principal. When law-enforcement officers make it known that they wish to talk to a student while under the supervision of the school, the student will be called to the office of the principal. Administration will attempt to contact the parent/guardian. The student shall be informed in the presence of the officers by the principal or the assistant principal that the student has three choices:
>
> 1. He/she may converse by telephone with his/her parent(s) or guardian(s).
> 2. He/she may decline to talk with the officers until his/her parent(s) or guardian(s) are present.
> 3. He/she may talk with the officers in the presence of an administrator.
>
> **Law enforcement officers who have a warrant for a student who attends a Polk School District school may by state law take the student to a law enforcement center prior to questioning. Polk School District administrators shall follow state laws in these cases.**

The Student asserts that his grandmother was not contacted until after the "custodial interrogation." There is nothing in the record to support the assertion that the Student was ever in custody. Moreover, upon reviewing the District's policy, it is clear that the provision applies to

situations wherein law enforcement seeks to question students as part of a criminal investigation.[2] In the instant case, AP Blalock undertook an administrative investigation relative to a Code of Conduct violation. The SRO was in the room when AP Blalock interviewed the Student. In the context of school investigations, this Board has previously held that "[d]ue process … does not require school officials to notify a student's parents when a student is being investigated about a violation of local board policy. Although parents may feel they should be notified so they can be involved in the investigation, or take disciplinary action themselves, or provide counsel to their children, due process does not require such notice." *A.C. v. Henry Cnty. Bd. of Educ.*, Case No. 2002-26 (Ga. SBE, Apr. 2002), citing *Goss v. Lopez*, 419 U.S. 565 (1975); *Dixon v. Alabama St. Bd. of Educ*., 294 F.2d 150 (5th Cir., 1961). See also, *Z.G. v. Henry Cnty. Bd. of Educ*., Case No. 2007-05 (Ga. SBE, Jan. 2007). Even if the policy applied to the school's administrative investigation of a Code of Conduct violation, the Student's interview was conducted in the presence of a school administrator, which is one of the available options under the policy. The State Board finds no violation of District policy.

The Student further argues that when SROs are involved in school investigations, school officials are acting in the capacity of agents of the government and are therefore bound by the requirements of the Fourth and Fifth Amendments. In that situation, the Student asserts that students must be informed of their rights prior to being questioned. The Student relies upon *In re T.A.G*., 292 Ga. App. 48, 663 S.E.2d 392 (2008), and *Ortiz v. State*, 306 Ga. App. 598, 703 S.E.2d 59 (2010), to support his position. Both legal authorities address a student's constitutional rights in a criminal proceeding. The instant case is a civil administrative matter. The cases relied upon by the Student are inapposite to an analysis of the Student's rights in a school administrator's investigation of a Code of Conduct violation.

Miranda[3] warnings are not required in a school disciplinary proceeding. See *J.C. v. Rockdale Cnty. Bd. of Educ.*, Case No. 2013-48 (Ga. SBE, June 2013) (holding that "[t]here is … no requirement to exclude evidence in an administrative proceeding because a *Miranda* warning was not given before questioning"). See also, *L.W. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2000-03 (Ga. SBE, May 2000) (holding that "[t]he 5th Amendment right to avoid self-incrimination is applicable only in criminal proceedings"). Further, while the Student refers to the Fourth Amendment, he fails to articulate its application to this matter. The Student told AP Blalock and the SRO that he had three hunting rifles in a safe at his grandmother's house. The Student's grandmother gave the SRO permission to search the house. No weapons were found. Under a similar scenario, the State Board held that "[t]he Student's argument … overlooks the fact that he told the resource officer that he had two BB-guns in his car. With the knowledge that the Student had weapons in his car, the resource officer had probable cause to search the car." *V.F. v. Fulton Cnty. Bd. of Educ.*, Case No. 2003-24 (Ga. SBE, Mar. 2003). Here, the Student told AP Blalock and the SRO that he had three rifles at home, thus giving the SRO probable cause for the search. Moreover, the Student's grandmother consented to the search of her home. Accordingly, the Student's argument that his Fourth and Fifth Amendment rights were violated is without merit.

[2] The record does not reflect whether criminal charges were brought against the Student arising out of the subject incident.

[3] In *Miranda v. Arizona,* 384 U.S. 486 (1966), the United States Supreme Court held that a person in custody must be advised of his Fifth Amendment rights prior to an interrogation.

Based upon the foregoing, the State Board concludes that the Local Board did not violate District policy, the Fourth or Fifth Amendments, or any other right to due process. The Student's argument lacks merit.

C. Record Evidence

The Student was found guilty of Threat/Intimidation in violation of the Local Board's Code of Conduct. The rule provides, in part:

> **THREAT/INTIMIDATION**
>
> Verbal or written threatening, bullying, cyberbullying, stalking, and/or intimidating school employees, other students, or other persons without actual physical contact is prohibited.

The Student asserts that there was insufficient evidence to find the Student guilty of Threat/Intimidation. The Local Board counters that there was more than enough evidence to support the charge against the Student.

"A threat is generally understood to be an attempt to create fear in another party." See *Z.H. v. Murray Cnty. Bd. of Educ*., Case No. 2020-18 (Ga. SBE, Mar. 2020). "A threat requires some overt action or statement by one person that is directed against another person and causes the other person to feel apprehensive." *J.P. v. Houston Cnty. Bd. of Educ*., Case No. 2000-25 (Ga. SBE, Aug. 2000). Here, the Student stated that he was going to kill D.Y., A.C., and B.J., pointed at them, and stated the order in which he would kill them. Despite the Student's comments, D.Y. and A.C. testified that they did not take the Student seriously. However, B.J. testified that he was afraid because the Student previously mentioned that he had guns for hunting.

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).

Here, the overwhelming evidence suggests that the Student's comments were intended as a joke. The boys had been laughing and joking that morning, when a statement was made that the Student's glasses resembled those worn by the serial killer, Jeffrey Dahmer. It was in the context of that conversation that the Student stated that he was going to kill them. While D.Y. and A.C. did not take the comments seriously, B.J. testified that he was afraid.

In reviewing the Student's appeal, this 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). This Board will not

substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board's actions were arbitrary and capricious. *Henry Cnty. Bd. of Educ. v. S.G.,* 301 Ga. 794, 804 S.E.2d 427 (2017); *Dukes-Walton v. Atlanta Indep. Sch. Sys*., 336 Ga. App. 175, 784 S.E.2d 37 (2016); *King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013).

The record shows that the Student stated that he was going to kill D.Y., A.C., and B.J. Although the Student did not state how he would kill his classmates, B.J. became afraid because he was aware that the Student had access to guns. Pursuant to the "any evidence rule," the State Board finds that there was some evidence that supported the Local Board's decision. Thus, the Local Board's decision is not contrary to law, arbitrary and capricious, or an abuse of discretion.

D. <u>Level of Punishment</u>

The Student was assigned to alternative school for the remainder of his high school tenure for committing the offense of Threat/Intimidation in violation of the Code of Conduct. The Student argues that the punishment was excessive and contrary to progressive discipline practices.

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). While the expulsion may seem harsh, the State Board cannot adjust the level of discipline. *K.B. v. McDuffie Cnty. Bd. of Educ.*, Case No. 2018-16 (Ga. SBE, Mar. 2018); *A.T. v. Fayette Cnty. Bd. of Educ.,* Case No. 2016-01 (Ga. SBE, Sept. 2015); *A.M. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2003-05 (Ga. SBE, Oct. 2002).

Further, O.C.G.A. § 20-2-735(d) provides that policies should fashion discipline "in proportion to the severity of the behavior leading to the discipline." The Student threatened to kill three of his classmates. One of the students became afraid because he was aware that the Student had access to guns. Based on the Student's behavior and disciplinary history, the Student was assigned to alternative school for the remainder of high school, with an opportunity for review at the end of the 2023-2024 school year to determine if he will be returned to the regular school environment. The State Board concludes that the Local Board followed progressive discipline policies and practices.

The Student has not shown that the Local Board's decision to assign him to an alternative school for the remainder of high school was arbitrary, capricious, or otherwise contrary to school policy or the law. Thus, the punishment imposed by the Local Board will not be disturbed.

V. CONCLUSION

For the foregoing reasons, the State Board of Education **AFFIRMS** the decision of the Local Board.

This 15th day of June, 2023.

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LEONTE BENTON
VICE CHAIR FOR APPEALS