

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ANTOINE W.,</b>	:	
	:	
<b>Appellant,</b>	:	
v.	:	<b>CASE NO. 1992-11</b>
	:	
<b>DEKALB COUNTY</b>	:	<b>DECISION</b>
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is an appeal from a decision by the DeKalb County Board of Education (“Local Board”) to uphold the decision of a Student Evidentiary Hearing Committee (“SEHC”) to suspend Antoine W. (“Student”) from all regular units of the DeKalb County School System for the remainder of the Winter quarter, with the option of attending alternative school, because he was in possession of a BB gun, destroyed school property, and improperly conducted himself outside of school hours on school property. The decision of the Local Board is sustained.

**PART II**

**FACTUAL BACKGROUND**

Immediately after the 1991-1992 Winter holidays, the Assistant Principal at Terry Mill Elementary School reported to the Assistant Principal at Sequoyah Junior High School that approximately fifteen windows had been shot at during the Winter vacation, resulting in damages which amounted to \$1,697.00. Three students he questioned said they saw Appellant shooting at the school windows over the Winter holidays. On January 22, 1992, the Student’s mother was notified that the Student was being charged with weapon possession, destruction of school property, and improper conduct outside of school hours on school property, and that an administrative hearing would be held on January 23, 1992. The administrative hearing was held on January 23, 1992, and the Student was found guilty of possessing a weapon, destroying school property, and improper conduct outside of school hours on school property. The Student was suspended for ten days and the local hearing officer made a recommendation that he appear

before the SEHC Tribunal. Notice of the results of the administrative hearing was given to the Student's mother on January 27, 1992.

On January 29, 1992, the Student's mother was notified that a hearing would be held on February 4, 1992, before the SEHC. At the February 4, 1992 hearing, evidence was presented that three students informed the Assistant Principal of Terry Mill Elementary School that they saw the Student shoot out the school windows. The Assistant Principal stated that the damages amounted to \$1,697.00. The Student's discipline record for the 1991-1992 school year was then read to the SEHC.

Three students testified that they saw Appellant shoot the school windows. The first student reported that he was at the school grounds with Appellant and another boy on January 1, 1992, and that he witnessed Appellant shooting out the windows. The student also testified that no one else was there. However, a second student testified that she saw the first student, Appellant and another boy at the school on December 27, 1991, and that she saw Appellant shoot the windows with a long BB gun, like a rifle. The third student testified that he saw Appellant shoot the school windows with a pistol. Appellant, then, denied shooting at the school with a BB gun. Finally, a last witness testified that he was with Appellant all day on January 1, 1992, the day the Local Board concluded the shooting occurred, and that Appellant never entered the school grounds.

The SEHC found the Student guilty of possession of a weapon, destruction of school property, and improper conduct outside of school hours on school property, and suspended him from all regular units of the DeKalb County School System for the remainder of the Winter quarter of the 1991-1992 school year, with the option of attending DeKalb Alternative School during the Winter quarter. The SEHC also prohibited him from returning to any regular school campus or activity during the suspension without authorization and ordered him to pay restitution before reentering any DeKalb County School. The decision of the SEHC was appealed to the Local Board. On February 17, 1992, the Local Board voted to uphold the decision of the SEHC. A notice of appeal to the State Board of Education was received on March 17, 1992.

### **PART III**

#### **DISCUSSION**

The Local Board's rules provide, in part:

- Rule 3a: A student shall not supply, possess, handle, use, or transmit any weapon or any other tool or instrument capable of inflicting bodily injury as a weapon.
- Rule 6a: Destruction of and/or threats to destroy school or public property... Penalty may range from detention to expulsion. Student must make restitution before readmittance to school.

Rule 17: Any conduct outside of school hours.....which may adversely affect the educational process or endanger the health, safety, morals, or well-being of other students, teachers, or employees within the school system.

On appeal, Appellant maintains that the Local Board failed to prove that he violated Rules 3a, 6a, and 17 because the evidence against him was inconsistent as to the date of the shooting, the weapon used, and the persons present, and that he had an alibi for the time the Local Board concluded that the shooting occurred. 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).

In the instant case, there were several inconsistencies in the testimonies of the three witnesses to the shooting. One witness stated that she saw Appellant shoot the school windows on December 27, 1991, while another student said he saw Appellant shoot the windows on January 1, 1992. Also, one witness testified that the weapon used was long, like a rifle, while another said the weapon was a pistol. Furthermore, one witness reported that only Appellant, one other boy and he were present when the shooting occurred, while another said that she was also present and saw it happen. Although these inconsistencies exist, the resolution of them is a question for the trier of facts. The Local Board is the trier of facts in this case and the State Board of Education is bound by their resolution if there is any evidence to support the Local Board's decision. In the instant case, the Local Board had testimony from three witnesses who saw Appellant shoot the school windows with a gun during the Winter vacation. The State Board of Education, therefore, concludes that there was some evidence before the Local Board.

Appellant also maintains that the presentation of his school disciplinary record during the hearing denied him of his substantive due process rights by biasing the panel against him. Although there is a prohibition against presenting a defendant's prior record in a criminal case, there is not yet any precedent cited for the idea that this is not authorized in a local school proceeding.

Appellant also has not shown that he was denied any of his substantive due process rights or harmed by the fact that the evidence against him was inconsistent and that the Local Board was biased against him. Although the Local Board suspended him from school for the remainder of the Winter quarter, the Student has the option of attending the alternative school during that quarter. The Student, therefore, has not been deprived of any educational opportunities except an opportunity to participate in extra-curricular activities.

#### PART IV

## DECISION

Based upon the foregoing, the record submitted and the arguments made, the State Board of Education concludes that the Local Board did not abuse its discretion or deny the Student any of his due process rights by suspending him for the remainder of the Winter quarter of the 1991-1992 school year, with the option of attending the alternative school during that quarter and requiring him to make restitution before reentering any DeKalb County School. The decision of the Local Board is, therefore,

SUSTAINED.

This 9<sup>th</sup> day of July, 1992.

Mr. Brinson and Mr. Williams were not present.

James H. Blanchard  
Vice Chairman for Appeals

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