

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| <b>SANTANA E.,</b>         | : |                         |
|                            | : |                         |
| <b>Appellant,</b>          | : |                         |
|                            | : | <b>CASE NO. 1994-76</b> |
| <b>vs.</b>                 | : |                         |
|                            | : | <b>DECISION</b>         |
| <b>CLARKE COUNTY</b>       | : |                         |
| <b>BOARD OF EDUCATION,</b> | : |                         |
|                            | : |                         |
| <b>Appellee.</b>           | : |                         |

This is an appeal by Santana E. (Student) from a decision by the Clarke County Board of Education (Local Board) to suspend him for the remainder of the 1994-1995 school year after finding that he violated the Local Board's policy against weapons because he had a box cutter, which contained a razor blade, in his possession while on school grounds. The Student claims the Local Board's decision was arbitrary and capricious because he should have been assigned to an alternative school. The Local Board's decision is sustained.

On August 31, 1994, the Student, a sixteen-year-old tenth grader, was involved in an argument with two other students in the high school cafeteria. He was escorted to the principal's office where he admitted that he was carrying a box cutter, which was a metal device with a single razor blade in it. He handed the razor over to the security officer who had taken him to the principal's office.

The Student's principal recommended expulsion for the remainder of the 1994-1995 school year. This recommendation was adopted by a Disciplinary Hearing Officer and accepted by the Local Superintendent. When the Student appealed to the Local Board, the Local Board conducted a de novo hearing. At the conclusion of the hearing, the Local Board voted to permanently expel the Student. When the Student filed an appeal with the State Board of Education, the Local Board modified its decision to suspend the Student for the remainder of the 1994-1995 school year.

The Student claims that the Local Board failed to provide him with procedural due process because a Disciplinary Hearing Officer was originally appointed under the provisions of the Public School Disciplinary Tribunal Act, O.C.G.A. § 20-2-750 et seq., but the Local Board proceeded to hear the case de novo. O.C.G.A. § 20- 2-754(c) provides, in part:

The local board of education shall review the record and shall render a decision in writing. The decision shall be based solely on the record and shall be given to all parties within ten days ... from the date the local board of education receives the notice of appeal.

O.C.G.A. § 20-2-754(c) (emphasis added).

The provisions of O.C.G.A. § 20-2-754 are applicable only when a student assaults a teacher or employee or another student, or when a student substantially damages the property of a teacher, employee or another student. O.C.G.A. § 20-2-753. In other instances where suspension or expulsion may be involved, a local school board may establish policies for the use of tribunals or hearing officers. O.C.G.A. § 20-2-752. This case involves the latter situation, i.e., there was no assault, battery, or damage to property. The Local Board, therefore, could use whatever policies it had devised for considering the case.

The Local Board has apparently adopted a policy of conducting a de novo hearing whenever there is a possibility of long-term suspension or expulsion. This procedure is in lieu of listening to a tape recording of the proceedings before the Disciplinary Tribunal Hearing Officer. Although the Student claims that this procedure denies him procedural due process, the Student has not shown how he is harmed by the procedure, nor has the Student cited any law that such a procedure is impermissible. O.C.G.A. § 20-2-752 provides that the policy has to provide a method of appeal to the local board in cases where long-term suspension or expulsion is recommended. It does not bar a de novo hearing as the method of review. The State Board of Education, therefore, concludes that the Local Board can provide a de novo hearing in lieu of reviewing the transcript of the hearing before the Disciplinary Hearing Officer.

The Student also argues that the Local Board's decision was arbitrary and capricious because the recommendation of long-term suspension made by the Disciplinary Hearing Officer and the Local Superintendent was made upon an erroneous understanding of the Student Code and state law. The Student argues that the Disciplinary Hearing Officer and the Local Superintendent erroneously believed that assignment to the alternative school was not available to a student found guilty of violating the rule that prohibits bringing weapons onto a school campus. The Student argues that without a stated criteria whether a student should be expelled or placed in an alternative school, the Local Board's decision must be considered arbitrary and capricious.

"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 (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). In the instant case, there was evidence that the Student brought a razor blade on campus. The Clarke County Student Conduct Code bans weapons, including razors, from school property, and students are informed that if a weapon is brought on school property, "a recommendation for disciplinary action which may include permanent expulsion will be made to the superintendent of schools by the hearing officer." The Student's disciplinary record, his academic records, and the facts surrounding the incident - the factors that the Student argues should be considered in determining whether a student should be expelled or admitted to an alternative school - were all available to the Local Board and there is no indication in the record that the Local Board failed to take those factors into consideration. Because there was a de novo review by the Local Board, the misperception of either the Disciplinary Hearing Officer or the Local Superintendent is immaterial. The Student adequately pointed out to the Local Board that an alternative school placement is available to students who violate the Local Board's ban of weapons.

We, therefore, conclude that the Local Board's decision was not arbitrary or capricious.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student procedural due process and that its decision was not arbitrary or capricious. The Local Board's decision, therefore, is  
SUSTAINED.

This 9<sup>th</sup> day of March, 1995.

Mr. William Teasley was not present.

Robert M. Brinson  
Vice Chairman for Appeals