

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2003-16
	:	
CLARKE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by A. W. (Student) from a decision by the Clarke County Board of Education (Local Board) to suspend him from school and place him in an alternative school for 45 days after finding him guilty of making terroristic threats and engaging in other disruptive conduct because he waved a cigarette lighter shaped like a gun in the air after getting off his school bus. The Student claims that he was denied due process because the hearing before a tribunal was improperly held and the hearing before the Local Board was also improperly held. The Local Board’s decision is sustained.

On September 3, 2002, the Student, a sixth grader, brought a cigarette lighter, shaped like a gun, to school in his book bag. He did not take the lighter out of his book bag during the school day but he told another student that he had a nine-millimeter in his book bag. At the end of the school day as he was getting off his bus, the other student asked him to show the “gun.” The Student got off the bus, took the lighter out of his book bag and waved it in the air.

After some parents called the school, the assistant principal conducted an investigation. The Student gave a statement in which he admitted taking the lighter to school, telling his friends that he had a nine-millimeter in his book bag, and waving it in the air after getting off the bus so his friends could see it. In addition to the September 3, 2002 incident, the Student had been involved in two other incidents since school started.

A tribunal hearing was held on September 9, 2002. The hearing officer found the Student guilty of other disruptive conduct and making terroristic threats and suspended the Student for 45 days to the alternative school. The Student appealed to the Local Board. On September 24, 2002, the Local Board conducted a *de novo* hearing. At the end of the hearing, the Local Board upheld the tribunal’s decision. The Student then filed an appeal with the State Board of Education.

On appeal, the Student claims that he was not given a list of witnesses that would appear before the tribunal. The notice was not introduced as evidence and there was

conflicting testimony about who was listed on the notice. Even if the notice for the tribunal hearing was improper, when the Local Board conducted a separate hearing and heard witnesses, it had the same effect as doing the hearing over again to correct any mistakes made in the first hearing. Thus, any errors in the tribunal hearing cannot serve as a basis for any complaint about the Local Board's decision because the Local Board's decision was based on what was presented to it rather than what was presented to the tribunal. The State Board of Education, therefore, concludes that the Student was not denied due process because of anything that occurred in connection with the tribunal hearing.

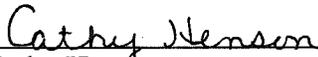
The Student next complains that he was unprepared for the hearing before the Local Board because he was unaware that witnesses would not be available. The Student, however, was asked before the hearing began whether he was ready to proceed and he assented to going forward rather than asking for a continuance to subpoena witnesses. The school system did not have any responsibility to have witnesses available that the Student wanted to have available, especially if the Student did not ask for a subpoena. The hearing officer did not ask the Student whether he wanted a continuance, but the failure to ask such a question does not result in any denial of due process to the Student.

The Student also claims that the students on the bus could not have seen him wave the cigarette lighter in the air. The Student's own testimony and statement that he waved the lighter in the air to show his friends, however, refute this claim.

There was evidence that the Student was involved in two previous incidents shortly before the lighter incident. Combined, these incidents were sufficient for the Local Board to find that the Student engaged in other disruptive conduct, which was sufficient to suspend him to the alternative school for 45 days.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student either procedural or substantive due process and its assignment of the Student to the alternative school for 45 days was within its discretionary authority. Accordingly, the Local Board's decision is SUSTAINED.

This 13th day of February 2003.



Cathy Henson
Chairperson, State Board of Education