

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

N.G.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2009-45
	:	
BARTOW COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by N.G. (“Student”) from a decision by the Bartow County Board of Education (“Local Board”) to place the Student at the Bartow Academy for the remainder of the 2008-2009 school year. Specifically, the Local Board found that the Student violated the Local Board’s rules by bringing a gun on a school bus while travelling to a school-sponsored wrestling match. For the reasons set forth below, this appeal is sustained because it is moot and because the record contains evidence supporting the decision of the Local Board.

I. BACKGROUND

On December 18, 2008, the Student and another student got in a fight in the locker room. The Local Board began investigating the fight. During the investigation, an allegation was made that on December 12, 2008, the Student showed several other students a gun while travelling on a school bus to a school-sponsored wrestling match.

The Student requested a hearing, and the Local Board convened a hearing tribunal. After hearing all the evidence, the hearing tribunal recommended placing the Student at the Bartow Academy for the remainder of the 2008-2009 school year, and for the first semester of the 2009-2010 school year. The Local Board reduced the punishment to the 2008-2009 school year, which ended on May 22, 2009.

II. ERROR ASSERTED ON APPEAL

As an initial matter, this appeal is moot. The punishment imposed by the Local Board ended on May 22, 2009. Thus, this appeal is moot because the punishment has passed and there is no relief that this Board can grant the Student. See J.S. v. Gwinnett Cnty. Bd. of Educ., Case No. 2006-37, (Ga. SBE, March 2006).

Even assuming this appeal is not moot, the Local Board's decision is supported by the evidence. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb Cnty. Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is 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. 1976). "[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence." F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student asserts that the evidence does not support the decision of the Local Board based upon the credibility of the students. However, the record shows that all three students clearly testified that the Student possessed the gun while on the bus. The Student contends that the three student witnesses are not credible because the allegation that the Student had a gun on the bus on December 12, 2008 was not brought up until after the December 18, 2008 fight. Thus, the Student contends the three students fabricated the story because of their involvement in the fight. The hearing tribunal heard the evidence and contention of the Student, and found the three students credible. Moreover, the record does not show that the three students were involved in the fight.

The Student further contends that it was impossible for him to have the gun on the bus on December 12, 2008, because his father and grandmother testified that the gun was in the possession of the grandmother since Thanksgiving. Again, the hearing tribunal heard this evidence. The hearing tribunal, as the finder of fact, judges credibility. Thus, even if this appeal was not moot, the decision of the Local Board is supported by admissible evidence.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of June, 2009.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS

SUMMARY

This is an appeal by N.G. (“Student”) from a decision by the Bartow County Board of Education (“Local Board”) to place the Student at the Bartow Academy for the remainder of the 2008-2009 school year. Specifically, the Local Board found that the Student violated the Local Board’s rules by bringing a gun on a school bus while travelling to a school-sponsored wrestling match. For the reasons set forth below, this appeal is sustained because it is moot and because the record contains evidence supporting the decision of the Local Board.