

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>SHANE T.,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	<b>CASE NO. 1986-15</b>
<b>V.</b>	)	
	)	
<b>DEKALB COUNTY</b>	)	
<b>BOARD OF EDUCATION,</b>	)	
	)	
<b>Appellee.</b>	)	

**ORDER**

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the DeKaib County Board of Education herein appealed from is hereby sustained.

This 14th day of August, 1986.

Mr. Sears voted no.

LARRY A. FOSTER, SR.  
Vice Chairman for Appeals

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>SHANE T.,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	<b>CASE NO. SBE 1986-15</b>
<b>v.</b>	)	
	)	<b>RECOMMENDATION</b>
<b>DEKALB COUNTY</b>	)	
<b>BOARD OF EDUCATION,</b>	)	
	)	
<b>Appellee.</b>	)	

**SUMMARY**

This is an appeal by Shane T. (hereinafter "Student") from a decision of the Dekalb County Board of Education (hereinafter "Local Board") which found the Student guilty of possession of weapons, suspended the Student completely for ten days, suspended the Student from all regular units of the local system for the remainder of the spring quarter of 1986 with the option to attend Hamilton Alternative School, and placed the Student on probation through the 1986-87 school year. The Student contends on appeal that the Local Board violated his constitutional rights, the penalties were imposed for possession of items which were not weapons, the Local Board rules as applied in this instance are overly broad and not related to any legitimate purpose, and the penalty exacted against him was too severe and beyond that noted to him in the Local Board procedures. The Hearing Officer recommends the decision of the Local Board be sustained.

**FACTUAL BACKGROUND**

The Student in this case was a junior in high school during the 1985-86 school year. In February of 1986, school officials were attempting to find out who was responsible for vandalism of the school the Student attended. As a part of their attempt to determine who vandalized the school, the school officials asked other students if they knew who was responsible for the vandalism. If a student's name was mentioned by other students as possibly being involved in the vandalism, the school officials performed a search of the student's car to see if any evidence might be in the car which would show the student was involved in the vandalism. Discovering who committed the vandalism was considered to be very important to the school officials because the vandalism had racial overtones which had set the atmosphere in the school on edge.

The Student in this case was one of the Students who was mentioned by other students as possibly being involved in the vandalism. In an attempt to discover whether the Student had been involved, the school administrators took the Student out of his classroom and asked the Student if he had any illegal items in his car and if they could search his car. The Student stated he had nothing illegal in the car and allowed the school officials to search it. The school administrators believed they might find a can of spray paint which they could connect to the vandalism. The Student opened his car and, in searching it, the school officials found nothing related to the acts of vandalism but found the Student had two "wooden sticks with carved handles and a can of mace."

Based upon the facts that the Student had the sticks and the can of mace, the officials charged the Student with violation of Local Board policy which prohibits possession of weapons on school property.

The Student was suspended for ten days and scheduled for a hearing before the Student Evidentiary Hearing Committee (hereinafter "Hearing Committee"). The Hearing Committee

found the Student guilty, and suspended him from all regular units of the Local System for the remainder of the spring quarter of 1986 with the option to attend Hamilton Alternative School, and placed him on probation through the 1986-87 school year. The Student appealed the decision of the Hearing Committee to the Local Board, which affirmed the decision of the Hearing Committee on April 9, 1986. The appeal to the State Board of Education was filed with the Local Board by letter dated May 6, 1986.

### DISCUSSION

Appellant contends first on appeal that the Student's Fourth Amendment rights were violated when the school officials searched his car. It is his position that the school officials did not have sufficient evidence of individualized suspicion upon which to base their search. Appellant contends his position is supported by the recent United States Supreme Court decision, New Jersey v. T.L.O., 105 5. Ct. 733 (1985) and a line of criminal cases requiring searchers to establish the reliability and credibility of informants.

The Local Board agrees that T.L.O. is the controlling case but contends that the search was reasonable under the standards enunciated in T.L.O. It is their position that the school officials had a sufficient individualized suspicion to conduct a search of the Student's automobile.

The Hearing Officer is of the opinion the search of the Student's car was reasonable within the requirements set forth by the Supreme Court in T.L.O. In T. L. O., a teacher observed a student smoking in the bathroom. The student was taken to the assistant principal where she denied she was smoking. The assistant principal demanded to see the student's purse, and, upon opening it, found a pack of cigarettes. When he removed the cigarettes, he saw cigarette rolling papers which led him to search the purse further. The further search produced marijuana and evidence of drug dealing by the student. The Supreme Court held that the Fourth Amendment's

prohibition on unreasonable searches and seizures applies to searches conducted by public school officials but that “the school setting also requires some modification of the level of suspicion of illicit activity needed to justify a search,” and that “the legality of a search of a student should depend simply on the reasonableness, under all the circumstances, of the search. Determining the reasonableness of any search involves a twofold inquiry: first, one must consider ‘whether the ... action was justified at its inception [cites omitted]; second, one must determine whether the search as actually conducted ‘was reasonably related in scope to the circumstances which justified the interference in the first place.’” Applying the two part test of T.L.O. to the facts in the present case, we first must look to see if the search of the Student’s car was justified based upon the information the school officials had at the time the search was instituted. Two school officials had been told the Student might have been involved in the vandalism. One of the officials had been told by two students the Student might have been involved in the vandalism. The vandalism had created a situation of unrest at the school and the school officials were placed in a position of attempting to calm the situation. Based upon the fact that the Student’s name had been mentioned by at least two students to two officials, and the situation was one which called for immediate action by the school officials, the search was reasonable at its inception.

The Student contends the Local Board’s failure to qualify its informants in accordance with standards issued by the courts to show probable cause demonstrates the fact that the Local Board did not have a reasonable suspicion to go forward with the search. However, the Hearing Officer is of the opinion that qualification of the informants is a standard which emanates from the probable cause requirements of criminal cases. In school cases, the Supreme Court has rejected the requirement of probable cause for a lesser standard of reasonable suspicion. While the Hearing Officer is not prepared to state that a mere allegation that an informant named the individual will, in all cases, provide reasonable suspicion, in a case such as this, where two school officials testify they were given the Student’s name with respect to the offense, and one

official testifies he was given the Student's name by two other students, the reasonable suspicion standard is met.

The next step in following the test enunciated by the Supreme Court in T.L.O. is to see if the search was reasonably related in scope to the circumstances which justified the interference in the first place. Because the informers had named the Student as possibly being one of the individuals involved in the vandalism, it was reasonable for the school officials to believe the Student might have incriminating evidence in his car, such as a can of paint, if he were indeed guilty. Thus, the second part of the test is satisfied and the search was reasonable under the standards enunciated in T.L.O.

Once it is established that the search was reasonable, the Local Board could use evidence found of an offense unrelated to the offense which gave rise to the search. Even in the criminal arena, the courts have consistently held that evidence which is found as a result of a constitutional search is admissible although unrelated to the purpose of the search.

Even if the search had been unreasonable, the exclusionary rule applied in criminal cases would not automatically apply in a school disciplinary proceeding to prevent the Student from being punished. The Supreme Court expressly avoided making that determination in T.L.O., and, since this search met the reasonable suspicion standard, the question is not addressed here.

The Student's second contention is that, even if the items were discovered through a valid search, the sticks were not weapons and the Student did not view the mace as a weapon since other students had mace on key-rings at school. He contends that he was not placed on actual or fair notice concerning the impropriety of the possession of these items.

The State Board of Education is obligated to sustain the decision of the Local Board of Education if there is any evidence to support the decision of the Local Board, absent a violation of law or an abuse of discretion on the part of the Local Board. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed. , Case No. 1976-11. In the present case, there was ample evidence from which the Local Board could determine the Student possessed weapons. The Student admitted one of the wooden sticks was the kind policemen carry. The can of mace may be generally considered to be a defensive weapon, but it can be considered a weapon, nonetheless. The Student admitted he had received the Local Board's rules which prohibited possession of weapons at school. He apparently believed the rule was not meant to apply to his automobile when parked in the school parking lot. However, the Local Board's reading of the rule to include the Student's automobile is by no means unreasonable. The Local Board has a legitimate interest in prohibiting students from bringing weapons to school, even to the extent of prohibiting weapons from being brought in cars to the school parking lot. Thus there is evidence to support the decision of the Local Board and the Local Board did not abuse its discretion.

The Student's final argument on appeal is that, because of Local Board rules, the Student will be limited from playing varsity football when the Student Disciplinary Manual does not include this penalty and that, thus, this penalty is excessive in violation of his rights to procedural and substantive due process.

This final argument was not raised in the hearing before the Local Board and, thus, cannot be raised on appeal before the State Board of Education. Sharpley v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. of Ed., 245 Ga. 647 (1980); Boney v. Cnty. Bd. of Ed., 203 Ga. 152 (1947). Fundamental to the appellate process is the idea that appellate bodies exist to correct errors made by lower courts. Where the lower court has

not been given an opportunity to consider an issue, it has made no error to be corrected on appeal.

#### RECOMMENDATION

Based on the foregoing discussion, the record presented and the briefs of counsel, the Hearing Officer is of the opinion the school officials did not violate the Student's rights and there was some evidence to support the decision of the Local Board. The Hearing Officer, therefore, recommends the decision of the Local Board be,

SUSTAINED.

L. O. BUCKLAND  
Hearing Officer