

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KIMBERLY H.,

Appellant,

v.

**BULLOCH COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 1986-23

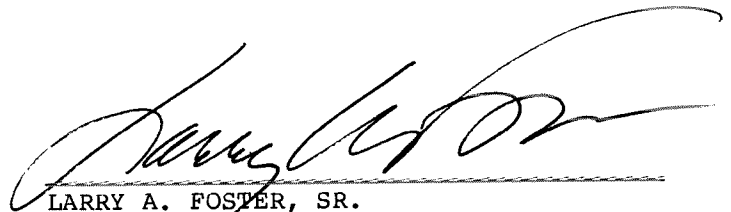
ORDER

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 Bulloch County Board of Education herein appealed from is hereby reversed.

This 14th day of August, 1986.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KIMBERLY H.,

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Appellant,

)

) **CASE NO. 1986-23**

v.

)

**BULLOCH COUNTY BOARD
OF EDUCATION,**

)

) **RECOMMENDATION**

Appellee.

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SUMMARY

This is an appeal by Kimberly H. (hereinafter “Student”) from a decision of the Bulloch County Board of Education (hereinafter “Local Board”) sustaining the decision of their principal suspending the Student for consumption of alcohol.

The parents’ contentions on appeal are:

1. There is no evidence the student violated the school alcohol policy contained in the student handbook.
2. The policy does not prohibit off campus alcohol consumption that has no effect on the student’s conduct or condition on the school premises.
3. The Local Board’s construction and application of the policy is vague, provides inadequate notice, is over- broad, and is violative of the due process clauses of the U.S. and Georgia constitutions.

4. The punishment is unreasonably harsh, arbitrary, capricious and is not uniformly applied.
5. Participation in the hearing process by the chairman after he had disqualified himself was improper.
6. The Local Board violated its own rules when it made the second finding.
7. The Local Board did not make an independent decision.

The Hearing Officer recommends the decision of the Local Board be reversed.

FACTUAL BACKGROUND

The Student was in the eleventh grade last year and attended the Junior-Senior Dance at Statesboro High School which was held on April 26, 1986. Several days after the dance, the principal of the school was investigating certain alleged drinking activities of various students at the school in relation to the dance. As a part of his investigation, he interviewed the Student. The principal testified he “gave her [the student] an opportunity to tell her side of the story as to what happened as far as her alcohol consumption as far as pre-prom activities were concerned in route to the prom, ... and she admitted to me that she had had a portion of a [wine cooler].” He further testified the Student had admitted to having three or four swallows of the wine cooler around 4:30 p.m. and that this was supposed to have taken place at some pre-prom activity.

The principal charged the Student with violation of school rules and the Student requested a hearing before the Local Board.

that he was only charging the Student with having had three or four sips of a wine cooler some three and one-half hours before the prom at some activity which he considered to be pre-prom

activity. The principal did not charge the Student with having the drink on school property or being intoxicated on school property.

The Student was charged with violation of the following policy contained in the Student Handbook:

DRUGS AND ALCOHOL

- (a) Possession, consumption, or sale of alcoholic beverages or illegal drugs as defined by Georgia law (or of substances which are purported to be alcoholic beverages or illegal drugs) is prohibited on school campuses or at school activities.
- (b) For his own safety and the safety of others, no student shall be allowed to remain on the school campus or at any school activity while under the influence of alcoholic beverages or other controlled substances as defined by Georgia law or while the odor of alcohol is about his breath. Drunkenness or drunken behavior at school or at a school-sponsored activity shall constitute violation of school policy and procedure and shall subject the offending student to appropriate disciplinary action.
- (c) Prescription or nonprescription drugs are not allowed at school unless prior approval has been obtained from a school official.

FIRST OFFENSE: Suspension for ten (10) days (out of school) plus reported to parents and law officials police or Sheriff's department.)

SECOND OFFENSE: Recommended expulsion to the Board of Education.

In addition to relying on the above-quoted policy, the principal stated he relied on a letter given out specifically for the junior-senior prom, which stated in part:

- I. BEHAVIOR CODE:
 - "A. The school policy on alcohol and drugs will be in force at this school function. (See Student Handbook.)
 - B. Attendance policy will be in force for violation of school regulations regarding drugs and alcohol. (10 days suspension, 30 points off final six weeks grade) ...
- II. GENERAL INFORMATION...
- C. Students will be responsible for their condition upon arrival at the Prom, discouraging prior use of alcohol.

The Student signed a statement she had read and understood the above.

At the conclusion of the hearing, the Local Board went into executive session and voted on a motion to oppose or defeat the suspensions as proposed by the principal. That motion was defeated by a vote of three to two. Another motion was made to sustain the suspension as supported by the principal. It was tied at a vote of two to two with one abstention. The Chair stated that, based on the tie vote, the motion or suspension as proposed by the principal would stand.

The school board attorney then pointed out that Local Board policy required the Local Board to vote by a majority vote to take action against the Student. A long discussion occurred, which included more questioning of the Student and further allegations of misconduct, after which the Local Board again went into executive session. When the Local Board came out, they announced they had voted 4 to 1 to sustain the principal's decision as to the suspension.

The Student was suspended for ten days, lost thirty points off of her grades, and will at least lose the semester due to missing over ten days since she would exceed the ten day absence rule of the Local Board.

The Local Board found that the Student violated:

“the school rule prohibiting consumption of alcoholic beverages at school activities, (1985-86 Student Handbook for Bulloch County School, pp. 13-14), which is interpreted to include consumption of alcoholic beverages en route to school activities...”

DISCUSSION

The State Board of Education is authorized to consider appeals from decisions of local boards of education made after hearing matters of local controversy in reference to the construction or administration of the school law. O.G.C.A. §20-2-1160. Under the “any evidence” rule, the State Board of Education is required to support the decision of a local board if there is any evidence to support that decision, absent an abuse of discretion or a violation of law 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.

Appellant has enumerated numerous grounds for reversal of the Local Board’s decision, but the main contention on appeal is that the Student’s conduct did not violate the Local Board’s discipline policy. It is her position that drinking four to five sips of a wine cooler some three and one half hours before the prom did not constitute a violation of the discipline policy of the Local Board. In addition, it is her position the reading of the policy to include her conduct is a violation of the requirement that discipline policies be written so that a person of reasonable intelligence can know what conduct is proscribed. Shamloo v. Mississippi Board of Trustees 620 F.2d, 516 (5th Cir. 1980)

The Local Board contends it had the authority to read the policy broadly to include the Student’s activity en route to the prom and that there was evidence to support its conclusion the Student’s conduct occurred en route to the prom.

The Hearing Officer is of the opinion the policy did not apply to the conduct of the Student and the application of the policy under all the circumstances constitutes a denial of the Student’s right to substantive due process. The Local Board may have the authority to prohibit the conduct for which the Student was charged, and discipline the Student for violation of

that conduct. However, the Student is entitled to “fair notice or a warning of what constitutes prohibited activity.” Shamloo v. Mississippi State Board of Trustees, Jd. While a local board is not required to draw its disciplinary policies with the precision of criminal statutes, its rules should be capable of a reasonable interpretation which would lead a student to understand what conduct is or is not allowed. In the present case, there is no question the policy would proscribe the possession or use of alcohol at the prom. Additionally, it would proscribe being under the influence of alcohol or having the odor of alcohol on the Student’s breath at the prom. However, at the hearing, the school’s only witness made it very clear that the Student was not being charged with either of those offenses. The sole ground for the discipline was that the Student had four or five sips of a wine cooler some three and one-half hours before the prom and that this constituted consumption of alcohol en route to the prom. There is no contention the Student was on campus when she consumed the wine, there is no contention the Student was intoxicated at the prom, there is no contention the Student had the smell of alcohol on her breath at the prom, and there was no showing that the Student was actually en route to the prom, as opposed to visiting at some friend’s house, at the time the Student sipped the wine cooler.

The Student, along with the other high school students, had received the letter specifically relating to conduct at the prom. As was quoted earlier, the letter stated in part:

Students will be responsible for their condition upon arrival at the Prom, discouraging prior use of alcohol.

This statement, although not completely clear, would, when read with the Local Board policy, tend to lead the Student to believe that her having four or five sips of a wine cooler away from school three and one-half hours prior to the prom was discouraged but not specifically prohibited.

In the case of Board of Education of Rogers. Arkansas v. McCluskey, 458 U.S. 966, (1982), the Supreme Court gave great latitude to local boards of education in the interpretation

of their own policies. The instant case, however, is distinguishable from McCluskey. In McCluskey, a local board of education had interpreted a policy prohibiting drugs to include alcohol. Prior to the decision by the Supreme Court, the lower courts had interpreted the word “drug” not to include alcohol and had precluded enforcement of the policy against the student. The Supreme Court stated that “a case may be hypothesized in which a school board’s interpretation of its rules is so extreme as to be a violation of due process, but this is surely not that case.” Thus, the Supreme Court upheld the local board’s broad interpretation of its rule. The facts in this case reach the hypothetical situation referred to by the Supreme Court. Unlike McCluskey, no reading of the policy leads to the interpretation given the policy by the Local Board. The policy specifically prohibits being under the influence while on campus or at any school activity and the letter given to the Student concerning the prom only discourages the consumption of alcohol prior to the prom. While the Local Board need not draft its policies with the precision of criminal statutes, it can avoid creating the inference that conduct which it intends to prohibit is only discouraged.

Based upon the discipline policy of the Local Board and the letter sent to the Student prior to the prom, the Hearing Officer is of the opinion the punishment imposed by the Local Board violated the Student’s due process rights. The Student could not have understood the policy and the letter to have proscribed her conduct.

The Hearing Officer is of the opinion that, were it not for the violation of the Student’s substantive due process rights, the other arguments set forth by the Student would not warrant reversal of the Local Board’s decision. While the punishment would be harsh, that does not mean it would be beyond the authority of the Local Board. Appellant has not shown how the participation in the hearing process by the disqualified chairman harmed her, and Appellant has not provided any authority for the proposition that the Local Board was not allowed to reconvene to reach a decision. Finally, the Local Board did sustain the decision of the principal,

but it clearly considered the circumstances in reaching its own decision and thus did not breach its duty to reach an independent determination.

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the policy did not prohibit the conduct of the Student and application of the policy to the Student violates the Student's substantive due process right not to be punished for conduct without being given a reasonable understanding the conduct is prohibited. The Hearing Officer, therefore, recommends the decision of the Local Board be,

REVERSED.

L. O. BUCKLAND
Hearing Officer