STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHANE W.,	)	
	)	
Appellant,	)	
v.	)	
	)	**CASE NO. 1986-37**
GWINNETT COUNTY		)
BOARD OF EDUCATION	)	
	)	
Appellee.		)

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

This 11th day of December. 1986.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEOROTA

SHANE W.,	)	
	)	
Appellant,	)	
v.	)	
	)	**CASE NO. 1986-37**
	)	
GWINNETT COUNTY	)	**RECOMMENDATION**
BOARD OF EDUCATION	)	**OF HEARING OFFICER**
	)	
Appellee.	)	

PART I

SUMMARY

This is an appeal by the parents of Shane W. (hereinafter "Student") from a decision of the Gwinnett County Board of Education (hereinafter "Local Board") to suspend the Student for nine days after finding him guilty of violating school rules as a result of the Student spraying a substitute teacher with a substance called "Silly String" at festivities sponsored by the city of Snellville. The Student had been suspended for nine days as of the date of the Local Board hearing and was reinstated with the nine-day suspension already served constituting the punishment for the offense. The parents contend on appeal that the Local Board lacked the authority to impose the punishment, there was no evidence of violation of the rules, and the Local Board violated the Student's constitutional rights. The Local Board contends the appeal should be dismissed for failure to meet the thirty day filing requirement, and if it is not dismissed then the suspension was within its authority and the Student's constitutional rights were not violated.

PART II

FACTUAL BACKGROUND

On May 3, 1986, the town of Snellville held a celebration. At that celebration, vendors were selling cans of "Silly String", a substance which is sprayed from an aerosol can and forms a styrofoam or plastic string-like material. Children who attended the celebration were spraying the silly string at each other in a festive atmosphere.

A substitute teacher for the Local Board was walking through the park during the celebration. The Student and two of his friends ran up to her and sprayed her with the Silly String. The teacher had been substituting in the Student's classroom prior to the incident.

On the following Monday, the substitute teacher called the assistant principal and reported that the Student and his friends had sprayed her with Silly String. The assistant principal discussed the incident with the Student's mother and with the other students and, based upon the information gleaned from those conversations, suspended the Student and gave him notice of a hearing to be held May 15, 1986, regarding the incident.

At the hearing before the Disciplinary Panel, the assistant principal testified about her telephone call from the substitute teacher. The substitute teacher testified that she had been in the park and been sprayed by the boys while they shouted, "revenge", and that she had the Student in her class the prior six week period in which she was substituting. The assistant principal testified she was not aware of the circumstances of the incident, i.e. the fact that the silly string was being sold generally in the park and that it was being sprayed on many people. The substitute teacher also admitted she had purchased a can of Silly String for her own son and that her son had attempted to use it in her defense when the Student and his friends sprayed her.

The Student testified that he and his friends had been spraying the Silly String and, when they saw the substitute teacher, they ran up to her and sprayed her as a joke, just as they had been spraying others at the park.

At the close of the hearing the panel found the Student guilty of violating the following rules:

> Rule 1: No student shall: In any manner, by use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance or any other conduct intentionally cause the disruption of any lawful mission, process or function of the school, or engage in any such conduct for the purpose of causing the disruption or obstruction of any lawful mission, process or function.
>
> Rule 3: A student shall not cause or attempt to cause damage to private property or steal or attempt to steal private property either on the school grounds or during a school activity, function or event off school grounds. Nor shall a student off school grounds, cause or attempt to cause damage to private property belonging to a school employee or steal or attempt to steal private property belonging to a school employee where such theft or damage [is] on account of that school employee's performance of his official duties.

The panel concluded that the Student should be reinstated effective the following day with the time served constituting the Student's punishment.

The parents appealed the decision to the Local Board by letter dated May 23, 1986, and the Local Board voted on July 15, 1986, to uphold the decision of the Disciplinary Panel. The

Local Board notified the Student's parents by letter dated July 17, 1986, but the notice failed to comply with O.C.G.A. §20-2-1160, which was recently amended to require that a statement of the parties rights be provided in the notice.

The parents appealed that decision by a hand carried letter dated August 18, 1986.

PART III

DISCUSSION

The parents contend on appeal that the Local Board's rules cannot be applied for an activity unrelated to the school, or that the rules are impermissibly overbroad and vague, and there was no evidence of any violation of the rules. The Local Board contends that the appeal should be dismissed because of the failure to file within thirty days. Additionally, the Local Board argues that it has the authority and duty to implement policies designed to protect its teachers even when they are away from the school.

This appeal arises under O.C.G.A. § 20-2-1160, which provides in part:

> **(b)** any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. . . . The appeal shall be filed with the superintendent within 30 days of the decision of the local board

The record reflects that the decision of the Local Board was made on July 15, 1986, and the appeal was not filed until August 18, 1986. The Local Board thus contends the appeal untimely filed and the State Board of Education lacks jurisdiction to hear the appeal. The Local Board's argument, however, fails to take into account an amendment to O.C.G.A. § 20-2-1160, which became effective July 1, 1986. This amendment requires the Local Board to notify the Student in writing of the decision and of his right to appeal the decision to the State Board of Education and to clearly describe the procedure and requirements for such an appeal. The Local Board provided the Student with a notice by letter, but the letter failed to describe the procedure and requirements for an appeal.

In order to give any effect to the 1986 amendment, an appeal should not be dismissed as untimely filed when a local board fails to provide the requisite notice. The purpose of the amendment was to provide an appealing party with actual notice of the appeal requirements. If appeals

are dismissed because of untimely filing when a local board fails to give actual notice, then the purpose is thwarted without any remedy. In the interpretation of statutes, the legislature must not be deemed to have passed a meaningless act. The Hearing Officer, therefore, concludes that the time for filing a notice of appeal does not begin to run until the local board issues a decision in the proper form. The appeal in the instant case, therefore, should not be dismissed for untimely filing.

The Student contends that there is no evidence to support the Local Board's decision that he violated Rules 1 and 3, and that Rules 1 and 3 are vague and overbroad and failed to give him notice that the conduct for which he was disciplined was prohibited. In making its review, the State Board of Education is bound to uphold a local board's decision if there is any evidence to support the decision, unless there has been an abuse of discretion or violation of law. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11. Although a local board of education can discipline students for their actions which are directed against school employees, off school grounds, the evidence presented at the hearing did not show conduct which constituted a violation of Rules 1 and 3.

Rule 1 requires intentional conduct which causes the disruption of any lawful mission, process or function of the school or is for the purpose of causing the disruption or obstruction of any lawful mission, process or function. It is clear the Local Board did not show that the conduct of the Student resulted in, or was for the purpose of causing, any disruption of any lawful mission, process or function of the school. Instead, the evidence clearly showed that many people were sprayed with silly string, it was available at a sanctioned activity of the city and approved by city authorities. The silly string was designed to be sprayed, and the substitute teacher purchased silly string for her own child. Rule 1 is reasonably designed to protect a teacher from violence, force, noise, coercion, threat, intimidation, fear, passive resistance or conduct intended to cause the disruption of a lawful mission of the Local Board. There is, however, no indication

or notice to a student that otherwise permissive conduct is prohibited if performed in the presence of a particular person. There also is no evidence that the Student engaged in any activity which was designed to intentionally cause the disruption of any lawful mission, process or function of the school. The Local Board argued that the lawful mission was the teaching of children, and the Student's actions were the result of the substitute teacher's teaching activities. While the Hearing Officer believes this is a novel argument in an attempt to bring the Student's activities within the ambit of the Rule, it does not provide the Student with any notice that he would be engaging in a prohibited activity. Additionally, as argued by the Student, Rule 1 is directed to activities which occur on campus; Rule 3 is directed to activities which occur *off* campus. The Hearing Officer, therefore, concludes that there is no evidence to support the Local Board's decision that there was a violation of Rule 1.

Likewise, Rule 3 does not prohibit the conduct which the evidence revealed in this case. Rule 3 requires that there be property damage either on school property or during a school function located off school property. The evidence does not show that damage to property occurred. The fact that the teacher had to brush the silly string off her clothes does not constitute damage to private property. Additionally, the function was not a school function. The Hearing Officer, therefore, concludes that the Student did not violate the Local Board's Rule 3.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Student's conduct, as evidenced at the hearing, did not fall within the rules with which the Local Board charged him. The Hearing Officer, therefore, recommends that the decision of the Local Board be

REVERSED.

L. 0. Buckland
Hearing Officer