

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BENNETT W.,	:	
	:	
Appellant,	:	CASE NO. 1991-5
	:	
v.	:	
	:	DECISION
MUSCOGEE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Bennett W. (“Student”) from a decision by the Muscogee County Board of Education (“Local Board”) to uphold the decision of a Student Disciplinary Tribunal to suspend him for the remainder of the 1990-1991 school year because he had a knife in his truck, which was located on school property. The Student claims that the rule is void for vagueness, he was denied due process because the notice given to him was inadequate, and the evidence was insufficient to sustain the charges. The Local Board’s decision is reversed.

PART II

FACTUAL BACKGROUND

The Local Board had a rule that provided that:

A student shall not possess, handle or transmit a razor, fireworks, ice pick, explosive, loaded cane, sword cane, machette [sic], pistol, rifle, shotgun, pellet gun, or other object that reasonably can be considered a weapon:

1. on the school grounds at any time;

On October 15, 1990, the Local Board changed the rule to read:

A student shall not possess, use, handle or transmit a knife, cane, machette [sic], pistol, rifle, shotgun, pellet gun, or other object that reasonably can be considered a weapon. Knives or guns that are considered to be of a criminal nature according to the police will cause expulsion for the remainder of the year or permanent expulsion. The police will be involved in the investigation of the possession of an illegal weapon. Weapons that are not "illegal" will be judged according to the facts and circumstances of the case.

Situations will apply to students when they are:

1. on the school grounds at any time;

Any student that is [sic] accused and found guilty of possessing, using, handling or transmitting a dangerous weapon as indicated in the above paragraph will be expelled for the remainder of the year or permanently. ...

The Student was in the tenth grade. On October 23, 1990, the Student drove his pickup truck to school. Enroute, he picked up another student. The Student had a fishing knife in the truck that had been in the truck since the beginning of the school year. The second student apparently asked about the knife. The Student began kidding with the second student and said that he was going to kill somebody. The two of them laughed. The Student then repeated the comment and laughed again. The second student did not laugh.

When they arrived at school, the second student reported the incident to the principal's office and said that the Student had a knife with him and was going to use it on another student. The vocational supervisor at the school obtained the information and called the Student in for questioning. The vocational supervisor told the Student that the administration was concerned about the possibility that the Student had a knife on him and he asked the Student to empty his pockets. The Student did not have a knife with him and the vocational supervisor said that the administration just wanted to caution the Student. The vocational supervisor was preparing to let

the Student leave when the Student said, "... I don't want to lie to you. I have a knife in my car."

The vocational supervisor and the Student then went to the Student's truck where the knife was found on the front seat. The Columbus police were called and they took possession of the knife but did not prosecute a case against the Student.

On October 25, 1990, the Student's parents were given written notice that a Student Discipline Tribunal would conduct a hearing on November 1, 1990 and that the Student had violated "Rule #6 Weapons & Dangerous Instruments." The hearing was then conducted on November 1, 1990.

During the hearing, the School System presented evidence concerning the discovery of the knife and the Student recited his contention that he had been kidding with his passenger. The principal testified that he had conducted an investigation and he believed the Student's story. The Student had not had any previous discipline problems. The principal recommended that the School System should place the Student on probation. The Tribunal, however, voted to expel the Student for the remainder of the 1990-1991 school year with the opportunity to attend the Alternative School. The Student appealed to the Local Board and requested an opportunity to appear and make a statement. On December 10, 1990, the Local Board sustained the decision of the Tribunal without permitting the Student an opportunity to appear and present arguments. This appeal then followed.

PART III

DISCUSSION

The Student claims on appeal that (1) he was given insufficient notice of the change of the rule concerning weapons; (2) the rule is flawed because it does not provide a rational criteria for determining which weapons are legal and illegal; it is internally inconsistent concerning

punishment, and it is not applicable in this case; (3) the evidence was insufficient to prove the illegality of the weapon; (4) the evidence was insufficient to prove that the weapon was possessed in a prohibited area, and (5) the punishment does not fit the violation. The Local Board argues that the Student is subject to suspension under both the old and the new rule; there was no evidence that the Student was unaware of the new rule, and the State Board of Education is required to uphold the disciplinary decisions of local boards of education.

The Student first claims that he was not given notice of the rule change until after the hearing. He claims that the Superintendent did not distribute the new rule to the students until after November 5, 1990. The record, however, does not indicate whether the new rule was distributed to the students before the incident occurred. There is some evidence that the Tribunal initially thought that the old rule was in effect because one of the members of the Tribunal admonished the Student and said that she had seen his signature that he had received a copy of the rule, but the signature was for receipt of the original rule.

Regardless of which rule was in effect, the record shows that the Student was denied procedural due process in this proceeding. Under both the old rule and the new rule, long-term suspension or expulsion is not required. The Disciplinary Tribunal, however, reached its decision because it thought that expulsion was mandatory. When the principal recommended probation, the Disciplinary Tribunal Chairman responded by saying, "The recommendation may seem reasonable, but there is a School Board policy which now says possession, use of a weapon, leads to expulsion."

In concluding the hearing and announcing the Tribunal's decision, the Disciplinary Tribunal Chairman read the last two paragraphs of the new policy and then stated that "... it is the decision of the Student Discipline Tribunal that in accordance with existing policy that you be expelled...."

The Disciplinary Tribunal reached its decision under the new rule but it was laboring under the misunderstanding that it had to expel the Student. The new rule, however, provides that expulsion is applicable only when a knife is considered to be “of a criminal nature according to the police”. The rule then goes on to provide that “Weapons that are not ‘illegal’ will be judged according to the facts and circumstances of the case.” There was no evidence that the knife in this case was “illegal” or that the police considered it to be “of a criminal nature”.

O.C.G.A. § 5-5-24(c) provides that “the appellate courts shall consider and review erroneous charges where there has been a substantial error in the charge which was harmful as a matter of law, regardless of whether objection was made...” Although the Disciplinary Tribunal did not receive a charge from a judge, it made its decision just as a jury would that had received an erroneous instruction from a judge. In light of the principal’s recommendation, we can only conclude that the misconception was harmful as a matter of law and the Student should have a new hearing.

The Student was further denied procedural due process when the Local Board refused to permit him, or his counsel, to attend the meeting where the Local Board reviewed the Disciplinary Tribunal’s decision. The Local Board’s policies provide that:

The hearings, both by the Tribunal and the Board of Education, shall be closed to the press and other media, and to the general public. However, such hearings shall be open to all school officials, including Board Members, complaining parties, and others whom the parent or guardian may wish to have present.

1990-1991 Behavior Code and Discipline Policy, p. 17. The record shows that the Student was not permitted to appear before the Local Board. Instead, the appeal was considered in executive session where only the chairman of the Disciplinary Tribunal was permitted to address the Local Board. The policy does, however, also provide that on appeal to the Local Board, the Local Board “shall review the record and shall render a decision in writing based solely upon the record“ Unless the complaining party has an opportunity to address the Local Board, the

policy is inconsistent in calling for the hearing before the Local Board to be open to the complaining party, but also providing that the Local Board will make its decision based solely upon the record. In any event, the Local Board hearing was neither open to the Student, nor was the decision made based solely upon the record because the Local Board also heard from the Chairman of the Disciplinary Tribunal.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board denied the Student procedural due process. The Local Board's decision, therefore, is hereby

REVERSED.

This 11th day of April, 1991.

Mr. Blanchard, Mr. Carrell and Mr. Sears

Larry A. Foster
Vice Chairman For Appeals

CONCURRING OPINION: It should not be presumed by this opinion that the State Board of Education, in any way, condones the presence of knives of any variety in the possession of students, constructive or otherwise, on the campuses of the public schools of this state. I fully concur with my fellow board member's decision to reverse the local board on the grounds that the Muscogee County Board of Education did not prove this student with due process of law.

Larry A. Foster