

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAX C.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1991-12
v.	:	DECISION
	:	
FLOYD COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Dax C. (“Student”) from a decision by the Floyd County Board of Education (“Local Board”) to uphold the decision of the Superintendent to suspend him for the remainder of the 1990-1991 school year and assign him to an Alternative School for the 1991-1992 school year. The Student had a gun in his car on school property. The Student claims that (1) the Local Board exceeded its authority because the discipline goes beyond the current school year; (2) the Local Board violated its own rules, and (3) the discipline was too severe under the circumstances. The State Board of Education sustains the Local Board’s decision.

PART II

FACTUAL BACKGROUND

The Student was in the tenth grade. On February 7, 1991 the Student drove his car to school. The Student kept a nine-millimeter semi-automatic handgun in his car. After school, he and his friends often went to the other side of town for target practice. The assistant principal called the Student from a class and questioned him about rumors that he had a gun at school. The Student admitted that he had a gun in his car. The Student and the assistant principal went to the

Student's car in the school parking lot and picked up the gun. Although the gun had a clip of ammunition, the firing chamber was empty. The Student said he brought the gun to school as a novelty item and for self-defense.

On February 8, 1991, the principal wrote to the Student's parents and told them about the incident. The principal also wrote that the Student was suspended for nine days until the Local Board could hold a hearing on February 21, 1991.

During the hearing, the School System told how the gun was discovered. The Student said that he was unaware that the rules applied to guns in cars. The Student also stated that if he had known about the rule he would not have brought the gun to school. The Student had not had any previous discipline problems. The Local Board voted to sustain the principal's recommendation to suspend the Student for the remainder of the 1990-1991 school year and assign him to an Alternative School program for the 1991-1992 school year. The Student filed a timely appeal with the State Board of Education.

PART III

DISCUSSION

The Student first claims that the Local Board's decision violated its own rules. Section One of the Local Board's Student Behavior Code (JCDA, p.3) says:

Weapons, Possession or use (unlawful, dangerous, capable or inflicting bodily injury):

Minimum - 3 days in school suspension
(Depends on type of weapon, intent, and other factors).

Serious cases - 9 days in-school suspension
Extreme cases - Recommendation for Alternative School or Long-term out-of-school suspension or expulsion.

The Student claims that the language of the rule is disjunctive and not conjunctive. As a result, the Local Board can select only one of the listed forms of discipline. Although the rule is disjunctive, we disagree with the Student's claim. The degrees of punishment are progressively more severe. The Local Board could have expelled the Student. Nothing limits the Local Board's authority to reduce a more severe form of discipline to a lesser form of discipline. We, therefore, conclude that even though the rule is disjunctive, the Local Board has the authority to apply it conjunctively, especially where the effect is to permit the Student to return to school.

The Student also claims that the Local Board did not have the authority to impose discipline beyond the current school year. We disagree. State law permits local boards of education to expel students beyond the current school quarter. O.C.G.A. § 20-2-740. We, therefore, conclude that the Local Board had the authority to impose disciplinary measures that extended beyond the current school year.

The Student's third and fourth claims are that the Local Board abused its discretion because the discipline is too severe. The Student argues that the behavior code says that discipline will be progressive. This requires the Local Board to consider all the circumstances. The Student has an excellent academic record and no previous discipline problems. It may also be true that the Student had no intent of harming anyone.

The Student Behavior Code (JCDA, p.3) states also that the Local Board will consider the type of weapon, intent, and other factors. Possession of a loaded nine-millimeter semi-automatic handgun is a dangerous and serious offense regardless of whether the person who has possession of the weapon is a good or bad student. The Student created a dangerous situation. We conclude that the Student's claim does not have any merit.

There is also no evidence that the Local Board's decision was arbitrary or capricious. The Local Board's rules provide for the same treatment of all students who have weapons on school premises in extreme cases. As discussed above, after examining all the factors, the Local Board concluded that this was an extreme case. During the hearing, the principal stated, "My recommendation was made on what I believe to be a precedent setting decision made by this Board... if tomorrow a student brings a weapon on my campus, you must know as a Board I would make the same recommendation." The evidence shows that the Local Board treats similar situations the same.

The Student's fifth claim is that the Local Board violated its rules for the hearing on February 13, 1991, because it did not provide him with a complete copy of the transcript of the hearing. As a result, he claims that the Local Board violated his due process rights. The Student's argument is that the tape does not provide him with a verbatim electronic record of the hearing, nor does it afford him the opportunity to create a complete transcript of the hearing. This appeal, however, does not concern any factual disputes and all the parties agree on the factual background about the incident. The appeal concerns the issue of the propriety of the punishment prescribed by the Local Board and this issue can be determined from the record before the State Board of Education. Thus, although it is unfortunate that many of the Student's attorney's statements were not recorded due to his position in the hearing room, this did not result in denying the Student an effective right of appeal.

PART IV
DECISION

Based upon the foregoing and the record presented, the State Board of Education is of the opinion that the Local Board had the authority to suspend the Student and assign him to alternative school during the 1991-1992 school year and the decision was not too severe under the circumstances. The Local Board's decision, therefore, is hereby

SUSTAINED.

This 8th day of August, 1991.

Mr. Abrams and Dr. King were not present.

Larry A. Foster
Vice Chairman for Appeals