

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHANE N.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1994-4
vs.	:	
	:	DECISION
JOHNSON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

**PART I
SUMMARY**

This is an appeal by Shane N. (Student) from a decision by the Johnson County Board of Education (Local Board) to permanently expel him from school when he applied for re-admission following a suspension for assaulting another student with a loaded gun. The Student claims that he was denied procedural and substantive due process. The Local Board's decision is reversed and remanded with direction for the Local Board to make a determination consistent with its January 9, 1992, decision as to whether the Student should be allowed to enroll in the school system.

**PART II
FACTUAL BACKGROUND**

On January 7, 1992, the Student, who was then twelve years old and in the sixth grade, brought a loaded gun to school and held it to the head of another student after cocking the hammer of the gun. A teacher managed to talk the student into giving up the gun. A Student discipline tribunal met to consider the incident and decided to expel the student for the remainder of the school year. The Tribunal also found that if the student

ever wants to attend school in Johnson County again, he will need to appear before a committee appointed by the superintendent to be evaluated before he can enroll.

Minutes, Johnson County Board of Education, January 9, 1992. The Local Board voted to accept the Tribunal's decision to expel the Student for the remainder of the school year.

At the time of the incident, the Student's father was on trial for murdering the Student's stepmother. The Student was psychologically evaluated and placed at the Masonic Home in Macon, Georgia. While in the Masonic Home, the Student attended Windsor Academy, a private school in Macon. The Student did not have any disciplinary problems at either the Masonic Home or at Windsor Academy. He also maintained A and B grades.

On June 9, 1993, the Juvenile Court ended the Student's probation. The Student's mother then sought to have him admitted to school in Johnson County for the 1993-1994 school year. The Local Superintendent appointed a committee to consider re-admitting the Student. On September 14, 1993, the panel recommended against permitting the Student to re-enroll. The Student appealed the panel's recommendation. In a letter dated November 30, 1993, the Student's parent was informed that a hearing would be conducted before a Student Disciplinary Hearing Tribunal to hear charges that the Student committed the offense for which he had already been expelled during the 1991-1992 school year.

The Tribunal hearing was held on December 8, 1993. The School System presented testimony about the Student bringing the gun to school on January 7, 1992. The Student presented witnesses who testified that the Student had adjusted at Windsor Academy and never presented any discipline problems. The Student's probation officer testified that it was unnecessary to keep the Student on probation because he did not pose a threat to anyone. The probation officer also testified that the Student presented less of a problem than many of the students who were attending school in Johnson County who were under his supervision, and that he would welcome the Student into his home at any time.

At the conclusion of the hearing, the Tribunal decided that the Student had taken a gun to school on January 7, 1992, and threatened another student. The Tribunal voted to permanently expel the Student. The Student appealed to the Local Board, but on December 17, 1993, the Local Board upheld the Tribunal's decision to permanently expel the Student. The Student then filed a timely appeal to the State Board of Education.

PART III DISCUSSION

The Student argues that permanent expulsion impermissibly denies him a public education. The Student also claims that the Local Board denied him substantive and procedural due process by permitting a second hearing and permanently expelling him.¹

The Local Board claims that the evidence supports the finding that the Student brought a gun to school on January 7, 1992, and a local board of education has the authority to permanently expel a student who brings a gun onto a campus. The Local Board also argues that the Student was not denied procedural or substantive due process because the original decision provided for permanent expulsion.

Under the current state of the law, the Local Board had the authority to permanently expel the Student at the time of his first hearing. Instead, however, the Student was expelled only for the remainder of the 1991-1992 school year, with an opportunity to thereafter reapply for admission. When he applied to be readmitted, however, the Local Board tried the Student again on the same charges and decided to impose a harsher penalty. In a criminal context, this is the same as sending a person to jail for a period of time and, upon the person's release, trying the person again for the same crime before another jury that decides that the first judge and jury were too lenient. Such action is only permitted when a federal/state dichotomy exists. We, therefore, conclude that the Local Board violated the Student's substantive due process rights by

¹ In the brief submitted by the Student's counsel, the claim was also made that the Local Board failed to notify the Student's mother of her right to appeal the initial decision. There was, however, nothing in the record to permit consideration of this claim.

conducting another hearing on the same charges he faced in January, 1992, and imposing a harsher penalty upon him.

The Local Board should have considered a recommendation by the Tribunal or conducted a hearing itself on the issue of whether the Student should be allowed to enroll in the school system based upon evidence of the Student's current behavior and the effects of rehabilitation.

**PART IV
DECISION**

The Local Board's decision, therefore, is reversed and remanded with direction for the Local Board to make a determination consistent with its January 9, 1992, decision as to whether the Student should be allowed to enroll in the school system.

This 14th day of April, 1994.

Mr. Brinson, Mrs. King, Dr. Thomas and Mr. Williams we're not present.

Richard C. Owens, Chairman
State Board of Education