

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MATTHEW H.,

Appellant,

vs.

**MUSCOGEE COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1994-24

DECISION

PART I

SUMMARY

This is an appeal by Matthew H. (Student) from a decision by the Muscogee County Board of Education (Local Board) to uphold the decision of a Student Discipline Tribunal to expel him for one calendar year after finding that he had a gun in his car while the car was parked on school property. The Student claims that he was unaware the gun was in his car because it was placed there by another student without his knowledge and he did not discover the weapon until he was off campus. He, therefore, claims that the Local Board failed to present any evidence that he violated any Local Board policies. The decision of the Local Board is reversed.

PART II

FACTUAL BACKGROUND

On Saturday, January 22, 1994, the Student had three other students in his jeep automobile. One of the students, Patrick, who was sitting in the rear seat directly behind the Student, had a pistol he brought from home. When the group went into a shopping mall, Patrick placed the pistol in the pouch that was attached to the rear of the driver's seat without telling the Student. On the following Monday, January 24, 1994, the Student drove his car to school and parked it on campus. During the early afternoon, Patrick asked the Student if the gun was still in the car. Patrick thought the gun was in the glove compartment, but the Student said he had looked in the glove compartment on the way to school to obtain an audiocassette and did not see the gun. The two of them decided the gun might be in the rear seat where Patrick was riding on the previous Saturday.

After school was out, the Student drove his car off campus approximately seven miles to pick up his brother at a community center. While waiting for his brother, he decided to look in the rear of his car to see if the gun was there. He discovered the pistol in the pouch. He took the pistol home and placed it on his dresser. Two days later, his brother took the pistol to school and turned it into a teacher. The Student's principal then questioned the Student about the gun and the Student told him what had happened. The principal charged the Student with violating Rule 6 of the Local Board's Behavior Code and Discipline Policy, which prohibits the possession, use, handling and transmission of any object that might reasonably be considered a weapon.

The Student was suspended from school and a Student Disciplinary Tribunal hearing was held on

February 11, 1994. After hearing the Student's story, the Tribunal voted to expel the Student for one calendar year. The Local Board affirmed the Tribunal's decision on February 21, 1994.

PART III

DISCUSSION

On appeal, the Student claims there was no evidence he knowingly had possession of the pistol on school property. The Local Board claims there is some evidence that permits it to find that the Student knew he had the pistol on school property.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See. Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In the instant case, however, there was no evidence that the Student had any knowledge that the gun was in his car.

The only evidence presented concerning whether the Student was aware the gun was in the pouch of his automobile was the Student's testimony and written statements from the other students that were consistent with the Student's testimony that he was unaware of the gun. The Local Board did not provide any evidence that the Student knowingly brought the gun on campus.

The Local Board argues that it could infer that the Student was aware he had the gun because he wrote in a statement he gave to the principal that he had forgotten about the gun until Patrick asked him about it while they were in their sixth period class, the Student did not report the possibility of a weapon being in his automobile, the Student did not return the gun to Patrick, and the Student told his younger brother a different story about the gun. The Local Board's conclusion, however, is based upon mere speculation, conjecture, and guess. There was no evidence presented that the Student was aware he had the gun in his automobile, and all of the consistent evidence supports the Student's assertions of lack of knowledge.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion there was no evidence to support the Local Board's decision that the Student was aware a gun had been placed in his car by another Student before he drove it on campus. The Local Board's decision, therefore, is REVERSED.

This 14th day of July, 1994.

Mr. Williams was not present.

Robert M. Brinson
Vice Chairman for Appeals