

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>DANA B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1994-56</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>CLARKE COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I  
SUMMARY**

This is an appeal by Dana B. (Student) from a decision by the Clarke County Board of Education (Local Board) to affirm the decision of a Student Disciplinary Tribunal to permanently expel her because she cut another student several times with a knife during a fight in the hallway of her school. The Student claims she was denied due process because of defects in the disciplinary hearing procedures, and she has a constitutional right to attend school. The Local Board's decision is sustained.

**PART II  
FACTUAL BACKGROUND**

On October 20, 1993, the Student, a twelve-year-old seventh grader, engaged in a fight with another seventh grader in the hallway of her school. During the fight, the Student stabbed the other student three or four times with a three- or four-inch pocket knife. The stab wounds were on the other student's neck and arm. The other student was rushed to a hospital in an ambulance. Although the other student's blood pressure dropped and she went into shock, she was discharged from the hospital the next day.

A Disciplinary Hearing Officer recommended permanent expulsion. The Student requested a rehearing because the audiotape of the hearing was incomprehensible. Rather than require a new hearing before the Disciplinary Hearing Officer, the Local Board conducted a de novo hearing on May 9, 1994.

There was testimony given that the other student started the fight and that the Student had the knife for self-protection. During the hearing, the victim's mother testified that she did not think the Student should be expelled from school because of her age, but she should be assigned to an alternative school. The Student's juvenile probation officer also recommended alternative school or transfer to another middle school. The Student also challenged the constitutional authority to permanently expel her.

The Local Board voted to permanently expel the Student. The Student then filed an appeal with the State Board of Education.

### **PART III DISCUSSION**

On appeal, the Student first claims that the Local Board has failed to create rules and regulations governing disciplinary hearing procedures as required under O.C.G.A. §§ 29-2-750 et seq., thus denying her substantive and procedural due process. Regardless of any problems the Local Board may have with its discipline hearing procedures, the hearing in this case was a de novo hearing before the Local Board. The Student, therefore, cannot complain about any of the procedures before the Disciplinary Hearing Officer because such proceedings were nullified when the Local Board heard the case de novo.

The Student claims next that the Local Board failed to give her notice that she could be permanently expelled from school because the Local Board's policies only provide for "indefinite suspension," rather than permanent expulsion, and there was no evidence presented that the Student had ever been given notice that she could face permanent expulsion for carrying or using a knife. The record, however, does not support the Student's contention that she did not receive notice. The Student Discipline Code was admitted into evidence and there was testimony that it was provided to the Student at the beginning of the school year. The Student Discipline Code provides that no one may carry anything that may be considered a weapon into the school and that any student who violates the rule will be subject to expulsion. Expulsion is defined as "losing the privilege of continuing school for the remainder of the grading period, year, or longer." The qualifier "or longer" certainly encompasses permanent expulsion. We, therefore, conclude that the Student had notice that bringing and using a weapon on campus would subject her to permanent expulsion.

The Student then claims the Local Board does not have the authority to permanently expel her from school and that she has a constitutional right to a public education. The Local Board argues that the constitution grants a privilege and not a right and that it has the authority to deny that privilege if a student violates its rules and regulations in the egregious manner the Student violated them.

The Georgia Legislature has provided that local boards of education can expel students without establishing any limitation on how long an expulsion may remain in effect. O.C.G.A. § 20-2-751(1). This code section has not been declared unconstitutional, and the State Board of Education cannot interpret the constitutionality of a statute. The State Board of Education, therefore, concludes that local boards of education have the constitutional authority to permanently expel students.

The Student argues that the Local Board's decision was arbitrary and capricious because if her actions had been more violent or of such a nature that she was remanded to the custody of the juvenile system, then she would be provided an education. That a dichotomy of treatment exists between the education system and the juvenile justice system does not establish that the Local Board's decision is arbitrary and capricious.

In this case, the alternatives of placing the Student in another school or in an alternative school were placed before the Local Board. The question then is whether a local board of education can permanently expel a twelve-year-old student who stabs another student with a knife. Any decision to permanently expel a student invites close scrutiny, but in the final analysis, local boards of education still retain the authority to permanently expel students who severely injure other students. We, therefore, conclude that the Local Board's decision was not

arbitrary or capricious.

**PART IV  
DECISION**

Based upon the foregoing, it is the opinion of the State Board of Education that the decision by the Local Board to permanently expel the Student was not arbitrary or capricious and was within the authority of the Local Board. The Local Board's decision, therefore, is SUSTAINED.

This 10<sup>th</sup> day of November, 1994.

Mr. Sessoms was not present.

Robert M. Brinson  
Vice Chairman for Appeals