STATE BOARD OF EDUCATION

STATE OF GEORGIA

ADAM H.,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1994-67**
vs.	:	
	:	**DECISION**
CLAYTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Adam H. (Student) from a decision by the Clayton County Board of Education (Local Board) to uphold the decision of a Student Discipline Tribunal to expel him from his neighborhood school, with permission to attend any other school in Clayton County, because he was found guilty of bringing a toy cap gun on the school campus in violation of Local Board policy. The Student claims that the policy does not prohibit the possession of toy cap guns. The Local Board claims that there was evidence to support its decision. The Local Board's decision is sustained.

On September 1, 1994, the Student, a senior, drove onto the campus of Mt. Zion High School. An assistant principal, who stopped the Student because of a sticker violation, saw what he thought was a gun in the Student's car. When the assistant principal asked the Student what was in his lap, the Student replied, "A cap gun."

After conferring with the principal, the assistant principal suspended the Student for ten days and turned the matter over to a Student Disciplinary Tribunal to hear charges that the Student had violated the Local Board's policy JCDAE, which provides, in part:

> A student shall not possess, handle, or transmit a razor, ice pick, explosive, loaded cane, sword cane, machete, pistol, rifle, shot gun, pellet gun, or other object that reasonably can be considered a weapon on the school grounds at any time; off the school grounds at a school activity, function, or event; or en route to and from school or a school activity, function or event.

A Student Disciplinary Tribunal conducted a hearing on September 8, 1994, and found that the Student had violated the policy because the cap gun could reasonably be considered a weapon. The Tribunal suspended the Student from Mt. Zion High School for the remainder of the school year and assigned him to Student Services for reassignment to one of the other regular high schools in the county. The Student then appealed to the Local Board.

The Student submitted a brief to the Local Board and argued that the cap gun could not be considered to be a weapon, but, instead, was a mere toy. The Local Board upheld the Tribunal's decision, and the Student then appealed to the State Board of Education.

On appeal to the State Board of Education, the Student argues that the Local Board's decision was erroneous because a toy cap pistol cannot be considered to be a weapon; that the policy does not refer to objects that look like weapons, but refers to other objects that are used as weapons, e.g., a pencil or a roll of coins wrapped in duct tape. In listing specific weapons and then the catch-all phrase "or other object that reasonably can be considered a weapon," the apparent attempt is to encompass other objects that may be used as weapons, rather than objects that may look like weapons. If the phrase means objects that look like weapons, then it cannot also be used to mean other objects that may be used as weapons. By not specifically stating that objects that look like weapons are prohibited, the Local Board failed to provide the Student with notice that he would engage in a prohibited activity if he brought the toy onto the campus.

The Local Board argues that the question of whether an object reasonably can be considered a weapon is a factual question and that if there is any evidence to support its finding, then the State Board of Education is bound to uphold the Local Board's decision. The Local Board also argues that the facts of this case are such that *Malcolm J. v. Muscogee Cnty. Bd. of Educ.,* Case No. 1993-2 (Ga. SBE, Mar. 11, 1993), is controlling. In *Malcolm J.,* the State Board of Education upheld the one-year suspension of a student who had a toy cap gun on campus.

"The control and management of the public schools constitutionally rests with the county board of education and such control and management will not be interfered with except where that control and management is contrary to law. *See, Colson v. Hutchinson, 205* Ga. *559, 67* S.E.2d 764 *(1951); Boney v. County Board of Education for Telfair County,* 203 Ga. 152 (1947)." *Martinius C. v. Griffin-Spalding County Bd. of Educ.,* Case No. 1992-12 (Ga. SBE, Jul. 9, 1992). In this case, we conclude that the Local Board did not abuse its discretion.

The Student's argument assumes that the phrase "or other object that reasonably can be considered a weapon" can only be interpreted to include either objects that are used as weapons or to include objects that look like weapons, but that it cannot be interpreted to include both classes of objects. We do not agree that the phrase is so limited. As argued by the Local Board, the issue of whether an object may reasonably be considered a weapon is a factual determination. Thus, if a student attempts to use a pencil in a manner that causes observers to conclude that the pencil is being used as a weapon, then the phrase encompasses the pencil. Also, if an object that looks like a weapon causes observers to reasonably conclude that it is a weapon, then the phrase encompasses the object. In this case, the assistant principal thought the Student had a gun in his possession until the Student told him that it was a toy cap pistol. The Local Board also observed the toy pistol and concluded that it could be thought to be a weapon.

In the Disciplinary Procedures handbook provided to each student, the Local Board defined weapons to include "firearms, pellet or BB guns, stun guns, blank pistols, or facsimile (look-alike) guns." Thus, the Student had advance notice that the Local Board's policy JCDAE was being interpreted to include "look-alike" guns. The State Board of Education, therefore, concludes that the Student had notice that bringing a toy cap pistol on campus was prohibited.

Based upon the foregoing, the State Board of Education is of the opinion the Local Board did not abuse its discretion and that the Student had notice. The Local Board's decision, therefore, is
SUSTAINED.

This 12th of January, 1995.

Mr. McGlamery was not present.

Robert M. Brinson
Vice Chairman for Appeals