

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

S. R.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1997-26
	:	
WHEELER COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee	:	

This is an appeal by R. H. (Student) from a decision by the Wheeler County Board of Education to uphold the decision of the Student Disciplinary Tribunal to expel him until the second quarter of the 1997-1998 school year, with the option of attending an alternative school during the first semester of the 1997-1998 school year, after finding that he possessed marijuana on school grounds and was under the influence of marijuana on school grounds. The Student claims that he was denied procedural due process because (1) the hearing was scheduled more than 10 days after he was suspended; and (2) the Local Board's attorney served as the hearing officer and inappropriately restricted cross examination and conducted her own cross examination. The Student also claims he was denied substantive due process because the Local Board's policies do not establish a maximum punishment for possessing marijuana on school grounds. The Local Board's decision is reversed.

On April 23, 1997, the Student, an eleventh grader, arrived late at Wheeler County High School. The principal ushered the Student into his office and noticed an odor of marijuana. The principal discovered a partially smoked cigarette in the Student's back

pocket. The Student said it was a marijuana cigarette and that he had smoked it before arriving at school. This was the Student's first offense.

The principal immediately suspended the Student and charged him with possession of marijuana on school grounds. One week later, on April 30, 1997, the Local Superintendent wrote to the Student and informed him that a hearing would be held by the Local Board on May 12, 1997, to hear charges that he possessed, used, and was under the influence of a controlled substance while on school grounds. The Student requested a delay of the hearing to secure the services of an attorney. The hearing was subsequently held on May 20, 1997.

During the hearing, the Local Board's attorney served as the hearing officer. The Local Board's attorney also questioned witnesses during the hearing. Evidence was presented that the Local Board's policy provided only for a minimum punishment, but not a maximum punishment, for the first offense of using or possessing marijuana on school grounds. After the Local Board heard the evidence, the attorney accompanied the Local Board when it retired to an executive session to consider its decision. The Local Board found the Student guilty of possessing and being under the influence of marijuana on school grounds and voted to expel him until the start of the second semester of the 1997-1998 school year and assigned him to an alternative school for the first semester of the 1997-1998 school year. Appellant then filed an appeal to the State Board of Education.

The Student claims he was denied due process because the hearing was scheduled later than ten days after he was suspended, which he claims is a violation of the holding in *Goss v. Lopez*, 419 U.S. 565, 42 L. Ed. 725, 95 S. Ct. 729 (1975). The Student also claims that he was denied due process because he was not informed about the sanctions

that would be imposed on him for possessing marijuana on school grounds. Finally, the Student claims that he did not receive a fair and impartial hearing because the Local Board's attorney served as the hearing officer, interrupted cross examinations, and questioned witnesses to elicit favorable testimony to support the Local Board's decision. Additionally, the Local Board's attorney remained with the Local Board when it deliberated on both the Student's guilt and the imposition of sanctions.

The Local Board argues that there was no violation of *Goss* because a hearing was held before the end of the Student's suspension, i.e., the start of the 1997-1998 school year. *Goss*, however, is more demanding in its requirements than what the Local board asserts. The essential holding in *Goss* is that a hearing must be held before a student can be suspended for more than ten days, not that a hearing has to be held before the end of the suspension period. The Local Board argues, "Since the Board decided to suspend appellant for the remainder of the 1996-97 school term, when the hearing took place did not increase the total length of the suspension." Under the Local Board's approach, a local board only has to impose a suspension period that goes beyond the date of the hearing to avoid any complaint about when the hearing is held. This argument completely strips *Goss* of any meaning. The State Board of Education concludes that the Local Board denied the Student procedural due process by suspending him for more than ten days without providing him with a hearing.¹

¹ Standing alone, the delay in the instant case would probably be harmless error because the Student asked for a further delay to secure the assistance of counsel.

The Local Board argues that the Student was made aware of the consequences of his actions because the Student Handbook² provides for a minimum ten-day suspension and violations of the drug policy are highlighted in bold print that states, “VIOLATION OF THIS MAJOR OFFENSE MAY RESULT IN IMMEDIATE SUSPENSION AND NOTIFICATION OF POLICE AND PARENT OR GUARDIAN.” The Local Board’s Policy concerning alcohol and other drugs provides for a minimum ten-day suspension for a first offense, a minimum ten-day suspension and the possibility of additional suspension or expulsion upon recommendation of the principal for the second offense, and expulsion for the remainder of the year with the possibility of permanent expulsion for the third offense. Thus, despite the use of the word “minimum,” the clear implication in the Local Board’s policy is that for a first offense, the minimum suspension period is also the maximum suspension period. For second offenses, there is a clear statement that a suspension for more than ten days can result if the principal recommends a longer suspension period. Since the normal punishment for a second offense is set at ten days, the ordinary implication is that a first offense suspension will be ten days without the possibility of a greater suspension period as provided for with a second offense.

Due process requires that a student be informed of the consequences of his or her actions before being subjected to long term suspension. The State Board of Education, therefore, concludes that the Local Board deprived the Student of due process by not informing him that he could be suspended for more than ten days for his first offense.

² The Student Handbook was not included in the record transmitted to the State Board of Education. The State Board of Education, therefore, cannot consider any
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The Local Board argues that the Student's hearing was conducted fairly and he was not denied due process because the Local Board's attorney served as hearing officer and advised the Local Board during its deliberations. In support of its argument, the Local Board cites the State Board of Education decisions in *Haire v. Talbot County Bd. of Educ.*, Case No. 1993-12 (Ga. SBE, Aug. 12, 1993); *Johnny M. v. Burke County Bd. of Educ.*, Case No. 1996-6 (Ga. SBE, May 9, 1996), *Roberson v. Cobb County Bd. of Educ.*, Case No. 1995-46 (Ga. SBE, Nov. 9, 1995), and *Alderman v. Appling County Bd. of Educ.*, Case No. 1992-9 (Ga. SBE, July 9, 1992). The cases cited by the Local Board are not applicable in the instant case. In *Haire*, a principal dismissal case, the State Board of Education held that there was no evidence in the record that the local board's legal advisor accompanied the local board while it deliberated. The decision does not indicate whether the legal advisor also served as the hearing officer as in the instant case. The other cases relate to bias on the part of the decision-makers.

In the instant case, the Local Board's attorney served as the hearing officer, questioned witnesses, and then accompanied the Local Board while it deliberated both the Student's guilt and punishment. A local board's attorney can serve as a hearing officer, *see, Robinson v. Hart County Bd. of Educ.*, Case No. 1983-25 (Ga. SBE, Nov. 11, 1983), or serve as the local board's legal adviser, *see, Haire, supra*. However, where, as here, the local board's attorney combines all the roles and serves in as advisor, judge, and advocate, the proceeding no longer has the appearance of being a fair proceeding. Under our system of jurisprudence, a judge simply does not retire with the jury while the jury

arguments based on the wording of the Student Handbook. *See, Deiangelo E. v. Coffee*
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deliberates, regardless whether the judge advises the jury during its deliberations. Despite the lack of any evidence of any impropriety, the only assumption that can be made is that the Local Board's attorney advised the Local Board during its deliberations. Otherwise, there would be no reason for the attorney to accompany the Local Board. The State Board of Education, therefore, concludes that the Local Board denied the Student procedural due process in permitting its attorney to combine the roles of hearing officer, advocate, and legal advisor during the hearing.

Local school systems necessarily have to be vigilant and deal with any incidents of drug usage among their students. In doing so, however, local boards cannot disregard the due process rights of students. The State Board of Education does not condone drug usage by students and has consistently upheld the decisions of local boards of education when the local boards have granted the student due process. *See, Bernard M. v. Barrow County Bd. of Educ.*, Case No. 1996-21 (Jul. 11, 1996); *Jeremy S. v. Whitfield County Bd. of Educ.*, Case No. 1995-19 (Ga. SBE, May 11, 1995); *Roderick J. v. Hart County Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991); *Michelle K. v. Gwinnett County Bd. of Educ.*, Case No. 1990-17 (Ga. SBE, Jun. 14, 1990). In the instant case, however, the Local Board did not afford the Student due process.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board denied the Student both procedural and substantive due process. The Local Board's decision, therefore, is hereby

REVERSED.

County Bd. of Educ., Case No. 1991-21 (Ga. SBE, Sep. 12, 1991).

This 11th day of September, 1997.

Larry Thompson
Vice Chairman for Appeals