

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. L.,

Appellant

vs.

**CLAYTON COUNTY
BOARD OF EDUCATION**

Appellee

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CASE NO. 1998-20

DECISION

This is an appeal by J. L. (Student) from a decision by the Clayton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to permanently expel him after finding him guilty of possessing a gun while on school property. The Student contends that the evidence did not show that he was ever in possession of the gun and that the punishment is too harsh. The Local Board's decision is sustained.

On February 6, 1998, at the beginning of the chorus class, a student named M. B. showed J. L. and another student, M. M., a gun that he had in his book bag. He then asked J. L. and M. M. to hide the gun if he got into trouble, which they agreed to. Shortly afterwards, an assistant principal came to the classroom and escorted M. B. from the class because of an unrelated incident.

M. M. was sitting beside M. B. in the back of the class. M. B. left his book bag beside M. M., but M. M. did not have a book bag in which to hide the gun. Thinking that M. B. had been called to the office because of the gun, the Student, who was sitting in the front of the classroom, took his book bag back to M. M., and told M. M. to put the gun in his book bag since M. M. did not have a book bag. He then returned to his seat in front of the class. M. M. took the gun out of M. B.'s book bag and put it in the Student's book bag. The choir director called the front office and asked for an assistant principal after she observed the Student take his book bag to the rear of the room.

An assistant principal and a security officer took the Student and M. B. to the band room and searched the Student's book bag. They found the gun, a fully loaded, .38-caliber revolver, in the Student's book bag. Both students then described what had occurred. The Student was charged with violating the conduct code rule, which prohibits the possession of any weapons, and Local Board Policy JCDAE, which prohibits the possession of pistols on school grounds.

During a hearing before a student disciplinary tribunal, the Student admitted all of the factual allegations but denied he was ever in possession of the gun. The tribunal found the Student guilty of the charges and permanently expelled him from all Clayton County Public School System schools. The Local Board upheld the tribunal's decision upon appeal. The Student then appealed to the State Board of Education.

On appeal, the Student claims that he was never in possession of the gun and that the punishment is too harsh for the circumstances. The Local Board argues that the gun was in the Student's book bag at his direction and that the Student and M. M. conspired to hide the gun, and, since the gun was in his book bag at his direction, the Student was in possession of the gun.

“A person who, though not in actual possession, knowingly has both the power and intention at a given time to exercise dominion or control over a thing is then in constructive possession of it....” *Jackson v. State*, 216 Ga. App. 842, 456 S.E.2d 229 (1995)(citing *Allen v. State*, 191 Ga. App. 623, 624, 382 S.E.2d 690 (1989)). In the instant case, the tribunal could determine that the Student had constructive possession of the gun because it was in his book bag at his direction. “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). The State Board of Education concludes that the tribunal had evidence before it that would permit it to find that the Student was in possession of the gun and the Local Board did not abuse its discretion by affirming the tribunal's finding.

The Student contends that the discipline imposed was too harsh. “A local board of education is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. *See, Boney v. County Board of Education for Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); *Braceley v. Burke County Bd. of Ed*, Case No. 1978-7.” *Joseph M v. Jasper Cnty. Bd. of Educ.*, Case No. 198 1-40 (Ga. SBE, Feb. 11, 1982). Local boards of education are authorized to permanently expel students. O.C.G.A. § 20-2-75 1. The State Board of Education concludes that the Local Board did not abuse its discretion by permanently expelling the Student for being in possession of a gun on school premises.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence before the Local Board to find that the Student was in possession of a gun on campus and the Local Board did not abuse its discretion in permanently expelling the Student. Accordingly, the Local Board's decision is
SUSTAINED.

This 9th day of July 1998.

Ms. Willou Smith, Ms. Barbara Archibald, and Dr. Bill Grow were absent.

Larry Thompson
Vice Chairman for Appeals