

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2000-15
	:	
DEKALB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by C. W. (Student) from a decision by the DeKalb County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel her through the end of the first semester of the 2000-2001 school year, with the option of attending an alternative night school during the expulsion period, after the tribunal found her guilty of possessing weapons on campus. The Student claims that she was unaware the weapons were in the car she was driving and the tribunal used the wrong standard to determine whether she was guilty. The Local Board's decision is reversed.

The Student, a 12th grader, was riding in her boyfriend's car shortly after school was over for the day. The Student wanted to go to track practice and knew she could not be late. The Student was attempting to qualify for a track scholarship to go to college. The Student and the boyfriend began arguing about where he was going to drop her off. The boy told her to get out or he was driving to his father's house. The Student did not get out of the car and they drove to a residence approximately one and one-half miles from the campus. The boy exited the car to pick up some trash and the Student slid over into the driver's seat and drove back to school. When she exited the car, an alarm went off and she was unable to shut it off. The Student found an assistant principal and asked him to help her shut off the alarm. A resource officer, who was with the assistant principal, said he would help her. The resource officer began looking under the dashboard for a cut-off switch when he spotted a pistol in a holster between the seat and the console of the car. The Student said she did not know the gun was in the car. The assistant principal then searched the car and found a hatchet covered by a sweater owned by the Student on the floorboard in the back of the car. The Student was charged with possessing weapons on campus.

The Student claims that she did not know that the gun and hatchet were in the car and she was denied due process because the tribunal hearing officer ruled that intent was not a necessary element of proof by the Local Board. During the hearing, the Student attempted to establish that she was unaware that the gun was in the car, but the hearing officer ruled that her intent was immaterial and cut off any further questioning regarding the Student's ability to see the gun.

On appeal, the Local Board did not argue whether the Student was denied due process because the element of intent was removed from the tribunal's consideration. Instead, the Local Board argues that the tribunal could find that the Student was aware of the gun and hatchet because of her relationship with the car owner, the fact that the gun was evident enough for the resource officer to see, and because the Student's sweater was covering the hatchet. Since, however, the hearing officer removed the questions of knowledge and intent from consideration, the tribunal did not have an opportunity to make a decision about the Student's knowledge. If the tribunal had considered the Student's intent, it could have decided that the Student was unaware of the gun and hatchet.

The car owner testified that the Student was upset that he purchased a gun and obtained his promise to dispose of it. He told her he no longer had the gun and did not want to let her out of his car at the location she wanted because it meant driving on campus with a gun in the car and he did not want to let her know he still had a gun. The gun was black, the car interior was black, and the gun was on the driver's side of the console. The Student went to the assistant principal and asked for help when the car alarm began sounding. All of these factors are consistent with the Student's lack of knowledge, which the tribunal was unable to consider because of the hearing officer's ruling.

The hearing officer's ruling denied the Student due process because 1) it changed the Local Board's burden of proof, and 2) it prevented the Student from conducting a full cross examination of the witnesses. Thus, while there was evidence from which the tribunal could have found that the Student had knowledge of the gun and hatchet, the hearing officer's ruling nullified such evidence by removing it from the tribunal's consideration, which then prevented the Local Board from meeting the burden of proof.

Based upon the foregoing, it is the opinion of the State Board of Education that the hearing officer denied the Student due process by limiting the cross examination of the witnesses and removing the element of intent from the tribunal's consideration. Accordingly, the Local Board's decision is
REVERSED.

This _____ day of June 2000.

Bruce Jackson
Vice Chairman for Appeals