

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

S.S.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-61
	:	
CLARKE COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by S.S. (“Student”) from a decision by the Clarke County Board of Education (“Local Board”) assigning the Student to the alternative school for the remainder of the 2009-2010 school year. The Local Board took this action because it found that the Student violated its weapons policy. For the reasons set forth below, this appeal is sustained.

I. BACKGROUND

The Student attends Clarke County Middle School. On or about December 1, 2009, the Student borrowed a replica hand grenade from another student and brought it to school. While at school, the Student showed it to several students in homeroom. The student who loaned the replica hand grenade realized the Student should not have it at school and took the object from the Student. The Principal received a letter alleging that the Student had brought a bomb to school. The Student was interviewed and admitted possessing a replica hand grenade. The Student was charged with “Possession of an Explosive Device”. The Student appealed the charges and was provided a hearing.

At the beginning of the hearing, the entire weapon’s policy was read as the charges against the Student. The Student testified that he possessed a replica hand grenade. The Student further testified that the hand grenade did not work, could not explode, and was a hollowed out piece of metal. The Principal testified that the Student told him that the object looked like a grenade and that it did not work. The Principal further testified the Student admitted referring to the object as an unexploded grenade when joking with another student.

After hearing all the evidence, the hearing officer found that the Student violated the Local Board’s weapons policy. The hearing officer assigning the Student to the alternative school for the remainder of the 2009-2010 school year. The Local Board affirmed the decision of the hearing officer.

II. ERROR ASSERTED ON APPEAL

A. Due Process.

The Student asserts that his due process rights were violated because he was charged with possessing an explosive device and then found guilty of violating the broader weapons policy. “The essential requirements of due process are notice and an opportunity to respond.” Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 546 105 S. Ct. 1487 (1985). Furthermore, O.C.G.A. § 20-2-754(b) requires the Local Board to provide the Student with reasonable notice of the charges against him.

In this case, the Student was charged with possession of an explosive device based upon his alleged admission that he possessed a hand grenade while at school. After hearing the evidence, the hearing officer found the Student guilty of a weapons violation. The weapons policy is broader and includes within its definition possession of “any toy gun or other object that “looks like, may be construed to be or is represented to be a weapon.” The definition of an explosive device does not include objects that look like explosive devices or weapons. Thus, the Student was initially only charged with the possession of an actual hand grenade in violation of the explosive device policy.

Thus, the Student contends that his due process rights were violated by finding him guilty of the broader weapons policy. The Student relies on E.W. & N.W. v. Henry County Bd. of Educ., Case No. 2001-36 (Ga. SBE June 2001) in support of his position. However, in E.W. & N.W., this Board found that due process rights were violated where the student was charged with one policy violation and found guilty of a completely separate policy violation. This case is distinguishable from E.W. & N.W. because the charges arise out of the same conduct and policy. Furthermore, this case is distinguishable from E.W. & N.W. because the entire weapons rule was read at the beginning of the hearing as the charges against the Student. The Student was represented by legal counsel at the hearing. The Student did not object at the hearing to the charges. Thus, this Board finds that the Student waived any objection to the weapons policy violation.

B. Record Evidence.

The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb Cnty. Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student admits that he was in possession of a replica hand grenade, i.e., an object that looks like a weapon. The Student clearly knew this violated the weapon’s policy. In fact, the other student who the weapon belonged to realized the Student should not have it at

school and took it away. Thus, the decision of the Local Board is supported by admissible evidence.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of June 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS