

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**CAROLYN BALES,** )  
 )  
 **Appellant,** )  
 )  
 **v.** ) **CASE NO. 1984-20**  
 )  
 **MUSCOGEE COUNTY BOARD** )  
 )  
 **OF EDUCATION,** )  
 )  
 **Appellee.**

**ORDER**

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Muscogee County Board of Education herein appealed from is hereby sustained.

This 14th day of March, 1985.

LARRY A. FOSTER, SR.  
Vice Chairman of Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C.B.,	)	
	)	
Appellant,	)	
	)	CASE NO. 1984-20
v.	)	
	)	
MUSCOGEE COUNTY BOARD	)	
OF EDUCATION,	)	
	)	REPORT OF
Appellee.	)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal from a decision of the Muscogee County Board of Education (hereinafter "Local Board") placing C.B. (hereinafter "Student") on probation for violation of a Local Board rule which proscribes the transmission, holding, or use of dangerous weapons. The Student appeals based on the position that there is no evidence to support a finding that the Student violated the rule. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

The Student is in the 7th grade at Daniel Junior High School within the Local System. On October 8, 1984, a fight occurred between the Student's sister and another student. This occurred shortly after the students got off the school bus. The students involved in the fight had in their possession a box cutter and a metal pipe with a ragged edge. During the fight, the metal pipe dropped to the ground. The Student picked up the pipe, holding it for

a few minutes before it was taken from her by the father of the girl fighting with the Student's sister. The Local Board, after a hearing, expelled the two students involved in the fight and then held a hearing for the Student involved in this case based upon her possession of the metal pipe. During the course of the hearing, the Student testified she picked up the pipe "to defend her sister." Later, she testified that she only intended to prevent another student from using it against her sister and only picked it up to hold it. This hearing was held by a disciplinary hearing tribunal and the tribunal recommended the Student be placed on probation for the remainder of the year. The Student appealed the decision of the tribunal to the Local Board of Education and the Local Board sustained the tribunal's decision. This appeal followed.

### PART III

### DISCUSSION

The State Board of Education is required to sustain the decision of the Local Board if there is any evidence to support that decision, absent an abuse of discretion by the Local Board. Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. In the present case, there is certainly some controversy as to the purpose for which the Student picked up the pipe. The Student contends on appeal that the purpose was to prevent its use by other students during the fight. It is clear in the record that the Student only had the pipe for several minutes at the most. It is also clear that the pipe had been used as a weapon against the Student's sister before it hit the ground and was picked up by the Student. The evidence is contradictory from the Student herself as to what purpose the Student had in picking up the pipe. Where the evidence is contradictory, only the trier of fact can make the determination as to what to believe. In the present case, it is apparent the trier of fact chose to believe the Student picked up the pipe to defend her sister and therefore had the intent to violate the rule against possession of dangerous weapons. It is also apparent that the trier of fact found the circumstances mitigated the

punishment required for violation of the rule. The tribunal only recommended probation, and while probation is punishment, it clearly is not as severe a punishment as was imposed on the students directly involved in the fight. The fact the Student testified she picked up the pipe to defend her sister, even though she later denied that purpose, was some evidence from which the Local Board could find the Student violated the rule and had an intent to possess the weapon.

#### PART IV

#### CONCLUSION

Based upon the foregoing discussion, the record presented and the briefs and arguments of counsel, the Hearing Officer is of the opinion that there is evidence in the record to support the decision of the Local Board of Education and, therefore, recommends that the decision of the Local Board be

SUSTAINED.

L. O. BUCKLAND  
State Hearing Officer