STATE BOARD OF EDUCATION

STATE OF GEORGIA

ELIZABETH B,	:	
	:	
Appellant	:	**CASE NO. 1987-2**
	:	
v.	:	
EVANS COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Elizabeth B. (hereinafter "Student") from a decision of the Evans County Board of Education to expel her from the Evans County School System for the remainder of the 1986-87 school year. The Student contends on appeal that the punishment was excessive or, in the alternative, if the punishment is not considered to be excessive, she should be afforded alternative educational opportunities. The Local Board contends that the Student has no standing to appeal the decision of the Local Board because the Student withdrew from the Local System, the Student was not denied substantive due process, and the Student has no right to an alternative educational program.

PART II

FACTUAL BACKGROUND

The Student was a ninth grader, and member of the high school band. On October 10, 1986, the Student participated in a band program during a football game between Vidalia High School and Claxton High School. During the program, the Student and a fellow classmate admittedly had alcohol in their possession in violation of school policy. The students contended they did not drink any of the alcoholic beverage. The Student withdrew from the Evans County School System on October 17, 1986.

Hearings were held on October 20, 1986, November 3, 1986, and on December 17, 1986, regarding the possession of alcohol by the Student. At the hearing on December 17, 1986, the Local Board introduced its policy against the use or possession of alcohol. The policy reads, in part, as follows:

> Students may not possess, .. any alcoholic beverage, .. while representing the school or participating in school functions.
>
> THE PENALTY FOR ILLEGAL USE OR POSSESSION OF DRUGS AND/OR ALCOHOL IS IMMEDIATE SUSPENSION FROM THE SCHOOL. PERMANENT EXPULSION WILL BE THE RECOMMENDATION TO THE BOARD OR EDUCATION.

The Local Board presented evidence that the Student and the Student's parent had received a copy of the policy at the beginning of the school year.

The Local Board found that the Student had possessed alcohol in violation of the school policy and then voted to expel the Student for the remainder of the year. Appellant filed this appeal on January 9, 1987.

PART III

DISCUSSION

The State Board of Education is authorized to hear appeals from decisions made by local boards of education on matters of local controversy involving the construction or administration of the school laws. O.C.G.A. §20-20-1160. The State Board of Education is not authorized to substitute its judgment for that of the local board, and must sustain the decision of the local board if there is any evidence to support the local board's decision, absent an abuse of discretion or violation of law by the local board. See Ransum v. Chattooaa Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11.

The Student contends on appeal that the Local Board has violated her substantive due process rights by imposing excessive punishment in relation to the offense committed and that the Local Board is required to consider, and offer, an alternative educational program. The Local Board contends the Student has no standing to appeal, the Local Board did not violate the Student's substantive due process rights, and the Student has no right to an alternative educational program.

The Local Board's contention that the Student has no standing to contest the Local Board's expulsion is based upon the fact that the Student withdrew prior to any disciplinary action occurring. If the Student lacked standing, there would be no reason to address the remaining issues raised, because the appeal would be dismissed simply on the basis of a lack of standing.

The State Board of Education has previously considered the effect of a student's withdrawal on disciplinary proceedings. See Baker v. Appling Cnty. Bd. of Ed., Case No. 1986-25. In Baker, the State Board of Education concluded that a local board had jurisdiction to conduct disciplinary proceedings when the student was enrolled at the time the act warranting discipline occurred, even though the Student withdrew prior to the disciplinary proceeding by the local board. The logic of Baker, that an offending party may not avoid jurisdiction simply by removing from the physical bounds of the jurisdictional authority, is equally applicable in this case. The Local Board has presented no reason why Baker should not be followed. Arguably, an offending student could waive the right to appeal by withdrawing, but the Local Board has not cited any law to support such a conclusion. The State Board of Education, therefore, concludes that the Student does have standing to pursue an appeal.

Local boards of education are charged with the responsibility of the operation of the local

school systems and have the authority to provide for disciplinary measures. See, 0.C.G.A. §2-20-50. The degree of discipline is discretionary with the local boards of education and will not be disturbed by the State Board of Education unless there has been a clear abuse of discretion. In the instant case, the Local Board policy clearly gave the Student advance warning that expulsion was likely in the event of a violation of the policy. As was stated in Alexis H. v. Dekalb County Board of Education, Case No. 1986-46:

> The punishment given to the Student certainly relates to a legitimate purpose of the Local Board, to attempt to insure a drug and alcohol free educational environment. For the State Board of Education to determine that the punishment given to the Student violates the Student's due process, the State Board of Education would have to determine that there was no rational basis for the punishment or that the punishment was so severe when compared to the offense that it was shocking. Here, such is not the case.
> Case No. 1986-46 at 3.

Appellant argues that other jurisdictions have found that the expulsion for the remainder of the year because of possession of alcohol was excessive punishment and violated the student's due process rights, and cites Clark Cnty. Bd. of Ed. v. Jones, 625 S.W.2d 586 (Ky. App. 1981), and Tomlinson v. Pleasant Valley School District, 479 A.2d 1169 (Pa. Cmwlth 1984). In the Tomlinson case, the court simply held that the trial court had acted properly in substituting its judgment for that of the local board of education when the local board of education failed to provide a complete record of the hearings. In other words, the trial court could hear the case de novo in the absence of a record. Similarly, in the Jones case, the court held that the trial court had not abused its discretion, even though it might have decided differently. Neither of these cases stands for the proposition that the expulsion of a student for the possession of alcoholic beverages is excessive punishment. They simply recognize the power of the trial court and the scope of review to be undertaken by the appellate court. The State Board of Education, therefore, concludes that the decision to expel the Student for the possession of alcohol is not so shocking as to be a violation of the Student's substantive due process rights.

The Student's argument that she is entitled to an alternative educational program is not supported by any Georgia authority. While alternative educational programs are an excellent way for school systems to assist students who have disciplinary problems, nothing cited by the

Student mandates that such programs be maintained.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Board of Education concludes that the Student has standing to appeal, but that the Local Board did not violate the Student's substantive due process rights, and is not required to provide the Student with an alternative education. The decision of the Local Board is, therefore, SUSTAINED.

Larry Foster, Sr.
Vice Chairman for Appeals