

On the way to the City of Atlanta high school, the two students purchased twelve cans of beer.

Shortly after the two students arrived on the campus of the City of Atlanta high school, an assistant principal, Mr. Fortson, spotted them and requested them to follow him into the school building. The two students were taken to Mr. Fortson's office because they had not followed procedures that required visitors to sign in at the main office. In the meanwhile, students from the school had reported the presence of the two strangers and another assistant principal, Mr. Hill, went to Mr. Fortson's office to assist him.

The assistant principals were concerned that the two students were on campus to sell drugs and they requested the students to empty their pockets. The Student's friend emptied his pockets, but the Student refused and began arguing with the principals. During the argument, Mr. Hill noticed a bulge in the Student's jacket and concluded the Student had a gun. He rushed the Student, pinned the Student's arms behind him, and took the gun. A school detective was called, and both students were arrested. Appellant was charged in juvenile court with delinquency.

On March 20, 1988, the Student's principal learned of the incident when he received a letter from the principal of the City of Atlanta high school. The principal sent a written notice to the Student's parents on April 7, 1988, that the Student was being charged with violating Local Board Rules 10 - Skipping class or required activities. Rule 21 - Loitering and/or going on any school campus without authorization/trespassing. Rule 24 - Criminal law violation. and Rule 26 - Conduct outside of school hours or away from school, and that a hearing would be held on April 11, 1988. The informal hearing was conducted on April 11, 1988 and the Student was found guilty of all charges and suspended for ten (10) days.

In a letter dated April 18, 1988, postmarked on April 19, 1988, and delivered on April 20, 1988, the Student's parents were notified that a hearing would be held on April 21, 1988 before a Student Evidentiary Hearing Committee ("SEHC"). The SEHC hearing was held on April 21.

1988. And the Student was found guilty of all charges. On April 22, 1988, the Student's parents were given written notice that the SEHC had decided to expel permanently the Student. The Student retained legal counsel and the SEHC decision was appealed to the local board on May 2, 1988. The local board met on May 9, 1988, and upheld the decision of the SEHC with the exception of violation of Rule 21, loitering. On May 11, 1988, Appellant was notified that he was permanently expelled from all units of the DeKalb County School System, with the option of applying for re-entry after six months (November 9, 1988). A timely appeal was then filed with the State Board of Education.

PART III

DISCUSSION

The Student argues on appeal that there was insufficient evidence to support two of the charges made, and that he was denied due process because he was denied sufficient notice of the hearing dates. He admits there was evidence to support the charge of skipping class, but complains that permanent expulsion for skipping class is too severe a penalty.

If there is any evidence to support the decision of the local board, then the State Board of Education is bound to uphold the decision. See, Ransom v. Chattooga Cnty. Bd. of Ed., Case No. 1976-11. The local board, however, has the burden of proving the charges made against the student.

Local board Rule 24 — Criminal Law Violation, provides:

A student who has been formally charged with violation(s) of criminal law and whose presence on school property may endanger the welfare and/or safety of other students, faculty, or staff, or whose presence may cause substantial disruption at school, may be subject to disciplinary action. Evidence was presented by the local board that the Student's presence in the DeKalb School System could endanger the welfare or safety of other students, faculty, or staff or that his presence caused or might cause any substantial disruption at the school. We, therefore, conclude that the local board did sustain the burden of proof to establish that the student violated Rule 24. Criminal Law Violations.

The local board's Rule 26 - Conduct Outside of School Hours or Away from School.
provides

Any conduct outside of school hours or away from school which may adversely affect the educational process or endanger the health, safety, morals, or well-being of other students, teachers, or employees within the school system.

Unlike the Rule 24 violation, we believe the local board did present evidence that there was a violation of Rule 26. The Student argues that the rule can only be applied when a student is involved in school-sanctioned activities. The rule, however, is not limited to school-sanctioned activities. The conduct occurred while the Student was supposed to be in school, and the rule is directed to conduct away from the school. There can be little question that the Student endangered the safety and well being of his companion, another DeKalb County student, by possessing a loaded pistol. We, therefore, conclude that there was evidence that the Student's conduct violated the Local Board's Rule 26.

The Student also claims on appeal that he was denied due process because he was given insufficient notice to enable him to obtain an attorney prior to the SEHC hearing. The local board argues that it provided the student with notice and a hearing. According to the local board, it met all of the due process requirements established by Goss v. Lopez. 419 U.S. 565 (1975). We conclude that he was not denied due process because of insufficient notice of the hearing.

PART IV

DECISION

Based upon the foregoing, the record presented, and the briefs and arguments of counsel, we conclude that the local board sustained the burden of proof to establish violation of local board Rules 24 and 26.

The decision of the local board, therefore, is
SUSTAINED.

Mr. Foster. Mrs. Baranco. Mr. Abrams, Mrs. Cantrell, and Mr. Lathem voted to sustain
the local board. Mrrs. Owens. Carrell, Smith and Sears were not present.

This 12th day of September. 1988.

John M. Taylor
Vice Chairman For Appeals