

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANTONIO E.,

Appellant

v.

**DEKALB COUNTY
BOARD OF EDUCATION**

Appellee

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CASE NO. 1988-28

DECISION

PART I

SUMMARY

This is an appeal from a decision by the DeKalb County Board of Education (“Local Board”) to uphold the decision of a Student Evidentiary Hearing Committee (“SEHC”) to expel Antonio E. (“Student”) for one quarter, with the option of attending alternative school, because he was in possession of a pistol within his school. The Student maintains on appeal that his due process rights were denied because he was not instructed and tested on the Local Board’s disciplinary code. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

Sometime during the month of April, 1988, the Student, a fourteen year old eighth grader, obtained a .25-caliber pistol from another student within his school. The other student had the pistol at school to show his friends, and the Student borrowed it because he was afraid that a student from outside his school was going to harm him. The gun was not loaded and the Student did not possess any bullets. At the end of the day, the Student returned the gun to the student that had brought it to school. The school principal learned about the incident and questioned the Student. The Student admitted that he had been in possession of the weapon for

one day. On April 22, 1988, the Student's parents were notified that the Student was being charged with possessing a gun while at school, and that a hearing would be held on April 26, 1988. The local school hearing was held on April 26, 1988, and the Student was found guilty of possessing a weapon at school. Notice of the results of the local hearing was given to the Student's parents on the same day.

On May 3, 1988, the Student's parents were notified that a hearing would be held on May 9, 1988, before a SEHC tribunal. Upon motion of the Student's counsel, the hearing before the SEHC was postponed to June 1, 1988.

At the June 1, 1988, evidentiary hearing, the Student's attorney made a motion to dismiss the proceedings because the Student had not received instruction or been tested on the Local Board's disciplinary rules. The motion was denied. During the hearing, it was established that the Student had been in Georgia for only three years. Prior to that, he had attended school in Miami, Florida and his primary language was Spanish. The Student had received a copy of the Local Board's disciplinary manual at the beginning of the school year, but he had not received any instruction concerning the standards expected, nor had he been given a test to determine if he understood the rules. The Local Board apparently has established a requirement that all students are to be instructed and tested on the disciplinary manual, but the rules were not introduced into evidence. The Student admitted that he possessed the gun for one day, but he testified that he did not understand the rules, and that he did not know there was anything wrong with possessing a gun at school. There was also evidence presented that the Student read on a sixth grade level.

The SEHC found the Student guilty of possessing a gun and expelled him from all regular units of the DeKalb County School system through the fall quarter of the 1988-1989 school year, with the option of attending Hamilton Alternative School during the fall quarter. The decision of the SEHC was appealed to the Local Board. On June 22, 1988, the Local Board voted to uphold the decision of the SEHC. A notice of appeal to the State Board of Education was filed on the same day.

PART III
DISCUSSION

The Local Board's Rule 3 provides, in part:

A student shall not supply, possess, handle, use, threaten to use, or transmit any weapon or any other tool or instrument capable of inflicting bodily injury as a weapon.

If there is any evidence to support the decision of the Local Board, then the State Board of Education will not reverse that decision. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11.

The Student maintains on appeal that he was denied substantive due process because he was not provided with instruction and a test on the disciplinary rules of the Local Board. The Student cites C.J. v. School Bd. of Broward County, 438 So.2d 87 (Fla. App., 1983) as support for his position. In C. J., the court held that a local board of education had to be held to a strict standard in establishing rules when it attempted to permanently expel students from school, and the rule against having a weapon in school was not applicable to a student who had brought a commemorative knife to school that was gift-wrapped.

In the instant case, the rule is clear -- students cannot be in possession of a weapon on campus. As argued by the Local Board, even in the absence of rules and regulations, any society should recognize that possession of a gun in a school for the purpose of protection is not acceptable conduct. Thus, regardless of whether the Student was fluent in Spanish or English, and regardless of whether he received instruction on the Local Board's rules, he should have known that possession of a gun was unacceptable conduct. The evidence, however, showed that the Student received a copy of the Local Board's rules, and that he was able to read at a sixth grade level. The language contained in the Local Board's rules appears to be simple enough that it can be understood by a sixth grader. Thus, even in the absence of any instruction and testing, the Student should have known that possession of a gun was against the Local Board's rules.

The Student also has not shown that he has been harmed by the fact that he did not receive any instruction on the Local Board's rules. Although the Local Board expelled him for one quarter from its regular schools, the Student has the option of attending the alternative school during that quarter. The Student, therefore, has not been deprived of any educational opportunities except an opportunity to participate in extra-curricular activities.

PART IV

DECISION

Based upon the foregoing, the record presented, and the briefs and arguments presented by counsel, the State Board of Education concludes that the Local Board did not deny the Student any of his rights of due process by failing to give him instruction on its disciplinary rules, and by expelling him for one quarter with the option of attending the alternative school during that quarter. The decision of the Local Board is, therefore,

SUSTAINED.

This 8th day of September, 1988.

John M. Taylor
Vice Chairman For Appeals