

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>MAE S. and</b>	:	
	:	
<b>SAMANTHA H.,</b>	:	
	:	
<b>Appellants,</b>	:	
	:	<b>CASE NO. 1988-29</b>
<b>v.</b>	:	
	:	<b>DECISION</b>
<b>MUSCOGEE COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is a joint appeal by Mae S. and Samantha H. (“Appellants”) from decisions by the Muscogee County Board of Education (“Local Board”) to uphold the decision of a Student Discipline Tribunal to permanently expel each of them for violating the Local Board’s rule against possessing dangerous weapons on school grounds. Appellants claim that they were denied both procedural and substantive due process. The decision of the Local Board is sustained with respect to Mae. 5, and sustained with respect to Samantha H.

**PART II**

**FACTUAL BACKGROUND**

On May 5, 1988, Samantha H., a sophomore, brought a loaded .38-caliber pistol to school from her home. She was under stress from a number of factors and was considering committing suicide with the gun. Mae S., a seventeen-year-old senior friend of Samantha’s, noticed that Samantha was upset and asked her what was wrong. Samantha disclosed to Mae that she was considering suicide and told Mae that she had a pistol in her purse. Mae took the gun

from Samantha and locked it in her locker with the intention of returning it to her parents so they could return it to Samantha's parents. When she took the pistol from Samantha, Mae was frightened by the situation and fearful of the consequences of Samantha having a gun. She did not, however, report the incident to any school officials.

The school authorities learned that Samantha had a gun when Samantha revealed to a counselor that she was considering suicide and had brought a pistol to school. Samantha then informed them that she had given the pistol to Mae. When Mae was questioned about the pistol, she took the school authorities to her locker and produced the gun. Both students were arrested, Mae S. as an adult and Samantha H. as a juvenile, and charged with possessing a dangerous weapon in a public place. The case against Mae S. was subsequently dismissed.

The Local Board's Rule 6 provides that:

A student shall not possess, handle or transmit a ... pistol ... or other object that reasonably can be considered a weapon (1) on the school grounds at any time; (2) off the school grounds at a school activity, function, or event; (3) en route to and from school; (4) en route to and from school function[s], activities, or events.

Both students were charged with violating the Local Board's Rule 6.

A Student Discipline Tribunal hearing was conducted on May 18, 1988, after written notice was given to both students. The Tribunal decided to permanently expel both students. An appeal was made to the Local Board, and, on June 20, 1988, the Local Board voted to affirm the decision of the Student Discipline Tribunal. A timely appeal was then made to the State Board of Education.

### PART III

### DISCUSSION

Appellants raised a number of procedural due process arguments when they filed their appeal, but they acknowledge that the arguments were not raised in the hearing below. They

have, therefore, abandoned these arguments in recognition of the rule that if an issue was not raised at the hearing below, it cannot first be heard by the State Board of Education.

Appellants next claim that they were denied due process because the Local Board and the Student Discipline Tribunal did not issue any findings of fact. Local boards of education, however, are not required to make findings of fact. Kelson v. The Bd. of Public Educ. for the City of Savannah and the County of Chatham, Case No. 1982-15; Hicks v. Dougherty Co. Bd. of Educ., Case No. 1980-30; cf., Ransum v. Chattooga Co. Bd. of Educ., 144 Ga. App. 783 (1978). The State Board of Education, therefore, concludes that the failure to make findings of fact did not deprive Appellants of their due process rights.

Both Appellants maintain that they have been denied substantive due process because the decision to permanently expel them was disproportionate to the offenses committed. Appellant Samantha H. claims that, because she had no prior disciplinary record and was troubled, confused, and facing unique stresses at the time of the incident, the local board should have considered alternative forms of punishment. Additionally, she claims that the permanent expulsion in light of the circumstances was inappropriate.

Appellant Mae S. claims that her only transgression was an error in judgment in not immediately telling the authorities about the pistol. She maintains that, even though elimination of weapons from school grounds is a legitimate objective, the objective is not fostered by permanently expelling a student who was trying to neutralize a dangerous situation.

Notwithstanding Appellant Samantha H.'s claim that she was under unique stress when she brought the pistol to school, the local board's rule is clearly applicable to her situation. It is undisputed that she brought the pistol to school with the intent of using it as a weapon and harming herself. Preventing students from bringing weapons to school is a legitimate objective of

any local board, and the local board's rule is designed to meet the objective. Appellant Samantha H.'s state of mind is a factor the local board could consider in determining the degree of punishment, but the local board has the authority to expel permanently a student who brings weapons to school. We, therefore, conclude that the local board did not deny Appellant Samantha H. any of her substantive due process rights and there was some evidence to sustain the local board.

We believe that application of the rule to, and permanent expulsion of, Appellant Mae S. to be appropriate. Although Appellant Mae S. was not responsible for bringing the pistol into the school, she placed the pistol into a locked locker. Although it can be said that her only violation was to make a mistake in judgment by not informing the school authorities that there was a pistol in the school, she nonetheless "handled" the gun in contravention of the local board rule. A rule of absolute prohibition against guns, knives, and other weapons, with automatic penalties for violation of the rule, is necessary for the maintenance of order within the schools. Possible mitigating factors may have been involved. We conclude there was some evidence to sustain the local board in the action against Mae S.

#### PART IV

#### DECISION

Based upon the foregoing, the record submitted, and the briefs and arguments submitted by counsel, the State Board of Education is of the opinion that the decision of the local board to permanently expel Appellant Samantha H. did not violate any of her rights of due process and is supported by the evidence.

The decision of the local board concerning Samantha H. is, therefore, SUSTAINED, and  
The decision of the local board regarding Mae S. is. therefore,

SUSTAINED.

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

In regard to Mae S., Mrrs. Foster, Smith and Taylor voted to sustain the local board; Mrs. Baranco and Mr. Abrams voted to reverse the local board. Mrs. Cantrell abstained. Mrrs. Smith, Sears, Owens and Carrell were not present.

This 12<sup>th</sup> day of September. 1988.

John M. Taylor  
Vice Chairman For Appeals

