STATE BOARD OF EDUCATION

STATE OF GEORGIA

CLAIRE J.,	:	
	:	
Appellant,	:	
v.	:	**CASE NO. 1992-17**
	:	
MUSCOGEE COUNTY	:	**DECISION**
	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal from a decision by the Muscogee County Board of Education ("Local Board") to uphold the decision of a Student Disciplinary Tribunal ("SDT") to place Claire J. ("Appellant") in the In-School Suspension Program for a period not to exceed six weeks and to participate in the Drug Free Counseling Program at Shaw High School because she was in possession of alcohol. Appellant maintains on appeal that there was not any evidence to support the decision of the Local Board. The Local Board's decision is reversed.

On March 25, 1992, a SDT conducted a hearing on charges that Appellant possessed beer while on an overnight trip for a school tennis match. During the hearing, evidence was presented that on March 13, 1992, Appellant, along with other members of the Shaw High School tennis team, was in a hotel in Gainesville, Georgia, for a tennis tournament. Some of the male members of the tennis team purchased two quart bottles of beer. One of the boys called Appellant's room, where four girls were staying, and asked the girls to come down to their room. Appellant testified that the girls refused to go. Later, after curfew, there was a knock on Appellant's door. One of Appellant's roommates opened the door while Appellant was seated on the couch. The two boys brought the alcohol into the room. Alcohol was consumed by both the males and the female who opened the door, but the SDT found no evidence that Appellant purchased any alcoholic beverage, brought any alcoholic beverage to the room in which she had been assigned, consumed any alcoholic beverage, or had any prior knowledge that the alcoholic beverages would be brought to her room. On March 16, 1992, the principal suspended Appellant for three days.

The SDT decided to place Appellant on probation with not to exceed six weeks in the In-School Suspension Program and to place her in Drug Free Counseling. The Tribunal gave the principal authority to limit the six weeks of in-school suspension. Appellant appealed the SDT decision to the Local Board. On April 16, 1992, the principal returned Appellant back to the regular school program one day before the team members who admitted to purchasing or consuming alcohol were returned. The principal also excused Appellant from participation in the

Drug Free Counseling Program. On April 20, 1992, the Local Board voted to uphold the decision of the SDT. Appellant then filed a timely appeal to the State Board of Education.

On appeal, Appellant maintains that there was no evidence to establish that she had possessed, purchased, or consumed the alcohol, or had any prior knowledge that the alcohol would be brought to her room. The Local Board maintains that Appellant was in a room where beer was being consumed, she knew it was being consumed, and she did not ask those who were drinking to leave.

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). In the instant case, however, there is no evidence of actual possession of alcohol. At most, the evidence shows that Appellant was in the same room where others possessed and consumed alcohol. There was no evidence that Appellant had any control over the situation.

The Local Board argues that presence or companionship with one who commits a crime is enough to establish guilt, and that O.C.G.A. § 16-2-1 defines a crime as the violation of a statute where there is a "joint operation of an act or omission to act and intention or criminal negligence." Notwithstanding, we do not believe the evidence showed that Appellant possessed any alcohol. Instead, Appellant affirmatively refused to violate the curfew rules by leaving her room and going to the boy's room. Appellant did not have any control over the situation and merely obeyed the rules that team members stay in the rooms to which they were assigned. Appellant did not participate in purchasing the alcohol, bringing the alcohol to the room, or consuming the alcohol. Appellant did not force the team members who were drinking to leave the room and she did not inform the coach of their violations. We, however, do not believe that such inaction establishes that Appellant was guilty of possessing alcohol.

Based upon the foregoing, the State Board of Education is of the opinion that there was no evidence to support the decision of the Local Board to place Appellant in the In-School Suspension Program and to place her in the Drug Free Counseling Program for possession of alcohol. The Local Board's decision, therefore, is

REVERSED.

This 9th day of July, 1992.

Mr. Brinson and Mr. Williams were not present.

James H. Blanchard
Vice Chairman for Appeals