

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHUNTAYE P.,

Appellant,

v.

**WILKINSON COUNTY
BOARD OF EDUCATION,**

Appellee.

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**CASE NO. 1992-41
DECISION**

PART I

SUMMARY

This is an appeal by Shuntaye P. ("Appellant") from a decision by the Wilkinson County Board of Education ("Local Board") to sustain the October 7, 1992, decision of a student disciplinary tribunal to expel Appellant for the remainder of fall semester, to bar him from all extra curricular activities for the remainder of the 1992-1993 school year, and to place him on probation so that any other disciplinary infractions will result in immediate and total expulsion from school. Appellant appeals on the grounds (1) the evidence did not support the decision, and (2) the decision by the Local Board was untimely. The Local Board's decision is reversed because it was arbitrary and capricious and without any evidence to support it.

PART II

FACTUAL BACKGROUND

On September 25, 1992, Appellant, a senior in high school, was involved in a fight with another student while they were attending a football game. The two were separated by a game warden, who was attending the game. The other student was bleeding from some head wounds. Appellant left the scene and a deputy sheriff, who was called to the scene, chased after Appellant and caught up with him before Appellant left the bleacher area. In the meanwhile, as the game warden restrained him, the other student pulled a knife from his back pocket and the game warden had to wrestle it away from him.

Both students were charged with fighting with a dangerous weapon. A hearing was conducted before a student disciplinary tribunal on October 7, 1992. During the hearing, there was no evidence that a weapon was used during the fight. There also was no evidence presented that Appellant even had a weapon.

This was Appellant's first offense. The Local Board policy provides for a three to ten day suspension for the

PART III

DISCUSSION

On appeal, Appellant claims that the evidence presented did not support the decision of the student disciplinary tribunal, and that the student disciplinary tribunal's decision was contrary to the published policies of the Local Board. He also claims that the Local Board denied him procedural due process because it failed to grant him a timely hearing.

The Local Board contends that there was evidence that Appellant used a weapon in the fight. The Local Board also claims that its policies permit long-term suspension for fighting with any object that reasonably can be considered a weapon. Additionally, the Local Board claims that it was not under any obligation to provide Appellant with a copy of the transcript of the student disciplinary hearing and any delay in making a decision resulted from Appellant's failure to provide the transcript.

"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 Ed. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Ed. of Educ., Case No. 1976-11 (Ga. SEE, Sep. 8, 1976)." Roderick J. v. Hart Cnty.. Ed. of Educ., Case No. 1991-14 (Ga. SEE, Aug. 8, 1991). The Local Board contends that there was evidence that Appellant hit the other student in the back of the head with a brick, or some other object. A review of the transcript, however, shows there was no evidence that Appellant hit the other student with a brick or any other weapon.

There was evidence that Appellant hit the other student's head on the asphalt while they were wrestling on the ground. The eyewitnesses testified that they did not see any weapons. One witness speculated that Appellant "must have" used something because of the bleeding, and another witness "thought" he saw something in Appellant's hand, but he did not see any weapon. Mere speculation is insufficient to establish a fact. The State Board of Education, therefore, concludes that the School System failed to prove the charges that Appellant was fighting with a weapon.

Appellant was subject to disciplinary measures for fighting, but the principal testified that the normal discipline for fighting the first time was three to ten days' suspension. The Local Board's student handbook establishes a progressive discipline procedure. The handbook provides that the discipline for the first offense of fighting can be three to ten days' in-school suspension, corporal punishment, or suspension. For the second offense, the in-school suspension period is increased to five to ten days. For the third offense, the discipline is five to ten days' suspension. On the fourth offense, the case is referred to a discipline tribunal. It is evident, therefore, that the maximum suspension for first time fighting is ten days.

The discipline imposed upon Appellant was based upon the charge of fighting with a weapon, which the School System failed to prove. In the absence of aggravating circumstances, Appellant was disciplined far in excess of the stated and prevailing policies. We, therefore, conclude that the Local Board's decision was arbitrary and capricious and must be reversed.

In view of our conclusion that the Local Board's decision was erroneous, we need not address Appellant's second ground for appeal that the Local Board's decision was untimely.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion the School System failed to prove that Appellant was fighting with a weapon and the Local Board's decision was arbitrary and capricious. The Local Board's decision, therefore, is hereby

REVERSED.

This 11th day of March, 1993.

Mr. Sears and Mr. Sessoms were not present.

Robert M. Brinson
Vice Chairman for Appeals