

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN C., BRAD G.,	:	
JARROD K., AND BEN T.,	:	
	:	
Appellants,	:	CASE NO. 1993-38,
	:	1993-39, 1993-40 and
v.	:	1993-41
	:	
MUSCOGEE COUNTY	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by John C., combined with the appeals by Brad G., Jarrod K., and Ben T. (collectively Students), from a decision by the Muscogee County Board of Education (Local Board) to uphold the decision of a Student Disciplinary Tribunal to expel the Students from Columbus High School to the Rose Hill Alternative School for eighteen weeks because they violated Local Board policy that prohibited the possession of alcohol on school premises. The Students claim that the Local Board's decision was arbitrary and capricious, their procedural due process rights were violated by the Local Board, and their rights to equal protection were violated. The Local Board's decision is reversed and remanded with direction to the Local Board to take the necessary steps to make the Students' disciplinary action consistent with the findings herein.

PART II

FACTUAL BACKGROUND

This case arises from a Student Disciplinary Tribunal hearing involving seven students who were charged with violating the Local Board's Rule 7 of its Behavior Code and Discipline Policy Handbook, which addresses alcohol, narcotics, stimulants, and other dangerous drugs. One of the students withdrew from school before the Disciplinary Tribunal Hearing was held. Of the remaining six, the Disciplinary Tribunal found four of the students guilty of violating Rule 7 and expelled them to the Rose Hill Alternative School for eighteen weeks. The other two students, J. H. and S. O., were also found guilty but were permitted to remain in school and do community work around the school

The Local Board's Rule 7 provides in part:

Students in the Muscogee County School District are prohibited from possessin[g], using, selling, transmitting, intending to transmit, or being under the influence of alcohol .

1. on the school grounds during, immediately before, or immediately after school hours;
 2. on the school grounds at any other time when the school is being used by any school group;
 3. off the school grounds at a school activity, function, or event;
 6. at any school-sponsored function, whether held during or after regular school hours, and whether held on or off school property;
 7. en route to and from school functions, activities or events;
- E. The principal shall refer the student to the Student Discipline Tribunal for final disposition of the case. The student shall be granted a hearing before the Student Discipline Tribunal If the accused student is found guilty of the charges, the penalty shall be either expulsion for the remainder of the year or permanent expulsion. However, a student designated as a first offender in violation of any act except selling may be granted probation under the following conditions:
1. Assignment in the Alternative School for a period of not less than eighteen (18) weeks.
 2. Mandatory participation in insight groups.
 3. Readmission to regular school program subject to favorable recommendation by the Alternative School principal or counselor.

Failure to attend the Alternative School and to participate in insight groups will result in expulsion.

On Friday, September 17, 1993, after school hours, the Students, who are all seniors at Columbus High School, arranged with another student to purchase some beer. The Students, along with J. M. and S. O., met in the parking lot of a restaurant. The Students each paid the student who purchased the beer, T. B., and the beer was transferred from I. B.'s car to Brad G.'s car and Jarrod K.'s car. The beer was placed in the trunk of Jarrod K.'s car and in a cooler or coolers in the seats of Brad G.'s car. Brad G. gave his keys to J. H. because J. H. was the "designated driver" for the night. The seven students left the restaurant in the two cars with the beer and drove to a girl's house, where they stayed for a short time.

The students left the girl's house and drove to a Hardaway High School (another high school operated by the Local Board) football game with Jarrod K., Matt C. and S. O. in Jarrod's car and Brad G., Ben T., T. B., and J. H. in the other car, which J. H. drove. When they arrived at the stadium, a police officer, who was investigating another incident, noticed the beer in Brad G.'s car. Another officer arrived and they asked Jarrod K. to open his car trunk, where they found the remainder of the beer the students had purchased. The officers cited all seven students for being minors in possession of alcohol.

On Monday, September 20, 1993, the principal of Columbus High School received a report from the police concerning the incident. The principal investigated the incident and the students admitted they were apprehended by the police with beer. The principal suspended the students and notified the students' parents that a hearing would be held before a Student Discipline Tribunal on September 28, 1993, on charges the students violated the Local Board's Rule 7.

At the hearing before the Student Discipline Tribunal, S. O. and J.H. said they did not have any intention of drinking any of the beer and they did not pay for any of the beer. The Students testified that they had no intention of drinking at the game, but intended to try to find a party afterwards where they would drink.

At the conclusion of the hearing, the Student Discipline Tribunal found the Students guilty of the charges. None of the Students had any prior disciplinary actions. The Students were assigned to the Rose Hill Alternative School for eighteen weeks and S. O. and J. H., one the son of a coach and the other a son of a principal, were assigned community work at the school

The Students appealed to the Local Board. When the Local Board met on October 22, 1993, neither the Students, their parents, nor their attorney were permitted to address the Local Board and they were told to leave the room while the Local Board made its decision. During the Local Board's deliberation, the chairman of the Student Discipline remained in the room with the Local Board. The Local Board voted to approve the decision of the Student Discipline Tribunal. The Students then filed a timely appeal to the State Board of Education.

PART III

DISCUSSION

The Students claim they were denied equal protection because two of the seven students were given community service rather than being sent to the alternative school. We agree.

The Local Board's Rule 7 provides that if a student is found guilty, then the penalty is "either expulsion for the remainder of the year or permanent expulsion." If the student is a first offender, then the student may be granted probation and attend the alternative school. The rule does not provide for the exercise of discretion by the discipline tribunal to assign community service to some students while sending others to the alternative school. In this case, J. M. and S. O. were assigned community service while all the others were sent to alternative school. In the opinion of the State Board of Education, such disparate and unauthorized treatment resulted in a denial of equal protection for the Students.

The Local Board argues that J. M. and S. O. cannot be treated the same as the Students because they did not pay for any of the beer and were unwilling participants. Rule 7, however, does not prohibit the purchase of beer. Instead, it prohibits possession and transmission. J. M. and S. O. were as involved in the possession and transmission of the beer as any of the Students; J. H. was even serving as the "designated driver" of one of the cars, which does not indicate the actions of an unwilling participant. All of the students were charged with violating Rule 7, and all of the students were found guilty of violating Rule 7. In the absence of any provision for discretion in the Rule, the Local Board must treat all of the students in the same manner. Since the Local Board permitted two students to avoid the alternative school, the State Board of Education concludes that the Local Board abused its discretion.

The Students also claim they were denied due process because they were not permitted to make any oral arguments before the Local Board and the chairman of the discipline tribunal was permitted to remain with the Local Board when it deliberated. In view of our conclusion, above, we do not address this claim.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board abused its discretion by consigning the Students to the alternative school while permitting two other students to provide community services. The Local Board's decision, therefore, is hereby reversed and remanded with direction to the Local Board to take the necessary steps to make the Students' disciplinary action consistent with the findings herein.

This 13th day of January, 1994.

Robert M. Brinson
Vice Chairman for Appeals