

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOSH G.,

Appellant,

CASE NO. 1995-39

vs.

DECISION

**HENRY COUNTY
BOARD OF EDUCATION,**

Appellee.

This is an appeal by Josh G. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a Disciplinary Hearing Officer to permanently expel him from the Henry County schools because he carried a loaded pistol on a bus to school and threatened another student. The Student claims that the Local Board violated his due process rights because he was not enrolled in the Henry County School System when the hearing was held. Additionally, the Student claims that the notice of charges was insufficient, there were errors in the conduct of the hearing before the Disciplinary Hearing Officer, there was insufficient evidence to support the charges, and that the punishment is too harsh. The Local Board's decision is reversed and remanded with direction to provide the Student proper notice and a new hearing.

On March 16, 1995, the parents of a student reported to the Principal of Eagle's Landing Middle School that the Student, whose twelfth birthday was during March, 1995, had threatened their son with a gun on the previous day after the two of them had exited the school bus at the end of the school day. The Assistant Principal began interviewing students who rode on the bus with the Student. Three students said they had seen the Student with a gun on the bus on the previous day. In accordance with Local Board policy, the Principal suspended the Student for five days and referred the matter to a Disciplinary Hearing Officer on charges that the Student had violated the Local Board's policy that prohibits weapons on campus or school property. The Student's parent was notified by telephone on March 16, 1995, that the Student was being suspended, that a hearing would be held, and that the Student had the right to be represented by counsel, could question witnesses, and could obtain subpoenas for the attendance of witnesses. A written notice that the hearing would be held on March 23, 1995, was mailed to the Student's parents on March 16, 1995, and the parents received the notice on March 18, 1995.

The notice of the hearing merely stated that the Student had violated the Local Board's policy, Section III, Rule 6; it did not specify any date, time, or location. A list of witnesses was also shown, but there was no statement concerning what each witness would testify about.

The Student's parents requested a delay in the hearing to permit them to obtain an attorney. The hearing was re-scheduled for March 28, 1995. On March 27, 1995, the Student's parents withdrew him from the Eagle's Landing Middle School and enrolled him in another school.

When the hearing began on March 28, 1995, the Student's attorney objected to going forward on the ground that the Local Board no longer had jurisdiction over the Student because he had withdrawn on the previous day. The Disciplinary Hearing Officer overruled the objection and the hearing proceeded. The Student's parents, however, refused to participate because of their perception that the Disciplinary Hearing Officer was biased, refused to explain the basis for the charges, and refused to communicate with

them and provide them with subpoenas. The Student's attorney remained to cross-examine witnesses.

During the hearing, two students testified that the Student boarded the bus on the morning of March 15, 1995, with a loaded revolver stuck in his pants. The Student told one of the students that he had stolen the gun from his grandfather and that he was going to use it to shoot another student. During the afternoon bus ride home, the Student pointed the gun at the student who was sitting with him. The hearing was continued to another day so that the Student could call the Assistant Principal as a witness to inquire about how the investigation was handled. Additionally, the Student's attorney was given the opportunity to obtain subpoenas for any other witnesses desired.

The Disciplinary Hearing Officer ruled that the Student had violated the Local Board's policy that prohibits the possession of guns on school property and permanently expelled the Student. The Student appealed the decision to the Local Board, which upheld the decision on May 4, 1995. The Student then appealed to the State Board of Education.

On appeal, the Student claims that the Local Board lacked jurisdiction to hold a hearing and enter a decision against him, it was an abuse of discretion to pursue discipline against him because he had withdrawn, the notice of charges was insufficient, thus violating his procedural due process rights, the hearing officer abused his discretion by not allowing a longer continuance to permit the Student to prepare for the hearing, the investigation of the charges was insufficient, there was insufficient evidence to rule against him, the punishment is too harsh, and the Local Board failed to consider other alternatives.

Without citing any authority, the Student claims that the Local Board was without jurisdiction to conduct a hearing or impose any disciplinary measures because he had withdrawn from school when the hearing was conducted. The Student's claim is without merit. The Student's withdrawal did not occur until after the charges were made and the hearing date set. Students cannot avoid accepting responsibility for their actions by simply withdrawing from school. The question of jurisdiction depends upon the relation that existed between the school system and the Student when the charges were made. We conclude that the Local Board had jurisdiction to conduct the hearing.

The Student claims that the Assistant Principal conducted a defective investigation because only a few students were interviewed. We are unaware of any prescribed method for conducting investigations. Even if the Assistant Principal had found that forty-five students on the bus had not seen the Student with a gun and five had seen the Student with a gun, the school administration could charge the Student with possession of a weapon. We, therefore, conclude that the claim of an inadequate investigation is without merit.

The Student claims that he was denied due process because he was unable to obtain any subpoenas before the hearing started. The Student's parents were told in the charge letter that they could obtain subpoenas from the Local Superintendent. When the Student's parents called the Assistant Superintendent, who served as the Disciplinary Hearing Officer, to ask about the procedures, the Assistant Superintendent did not return their call until late in the afternoon of the day before the hearing, which was too late for them to meaningfully serve anyone. The Local Board argues that the Student's parents should have called the Local Superintendent as they were advised in the charge letter. The Local Board's position, however, is unrealistically legalistic. The Local Board's position would require a busy superintendent to become personally involved in the hearing process. The Student's parents should have been able to rely upon the Assistant Superintendent to provide them with information in a timely fashion. We, therefore, conclude that the Student was improperly denied access to subpoenas before the hearing started.

Notwithstanding the initial error of not providing subpoenas, the Disciplinary Hearing Officer continued the hearing to permit the Student's parents an opportunity to obtain and serve subpoenas. As a result, we conclude that the initial failure to provide subpoenas was harmless error and does not serve as any basis for overturning the Local Board's decision.

The Student claims that the Local Board's decision is too harsh and that the Local Board failed to consider other alternatives. The record, however, shows that other alternatives were presented to the Local Board. The Local Board, therefore, must be deemed to have considered other alternatives. The question of whether the punishment is too harsh is really a question of whether permanent expulsion is appropriate in light of the offense. We cannot conclude that it is inappropriate to permanently expel a student who brings a loaded gun to school and expresses an intent to shoot another student. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. See, Boney v. County Board of Education of Telfair County, 203 Ga. 152 (1947); Braceley v. Burke County Bd. of Ed., Case No. 1978-7." Joseph M. v. Jasper Cnty. Bd. of Educ., Case No. 1981-40 (Ga. SBE, Feb. 11, 1982). The Legislature has granted local boards of education the authority to permanently expel students. O.C.G.A. § 20-2-755. We, therefore, conclude that a local board of education can permanently expel a student.

The Student claims that the Disciplinary Hearing Officer abused his discretion by not granting a longer continuance to permit him to prepare for the hearing. The hearing was originally scheduled to be held on March 23, 1995. The Disciplinary Hearing Officer reset the hearing date to March 28, 1995, when the Student's parents requested a ten-day delay. Additional time was also granted after the hearing started so that the Student could obtain the attendance of a witness from out of town. The Student, therefore, had at least ten days to prepare for the hearing, which we believe is an adequate period of time. We, therefore, conclude that the Disciplinary Hearing Officer did not abuse his discretion by not granting additional time to prepare.

The Student claims that the notice of the charges was deficient and did not provide him with sufficient information to permit him to prepare a defense. The notice of the charges only stated that he had violated Section III, Rule 6 of the Student Handbook and it provided a list of witnesses. The notice did not state how he had violated the rule, nor did it provide a summary of the testimony expected from the witnesses.

"One of the main reasons for requiring notice is to permit the accused to prepare a defense. To prepare a defense, the accused needs to know the rule or rules allegedly violated, the date, time, and place the offense occurred, and the act or actions that result in an offense to the rule or rules. The amount of information needed to prepare a defense depends on the specificity of the rule involved." Damon P. v. Cobb Cnty. Bd. of Educ., Case No 1993-9 (Ga. SBE, May 13, 1993). In Damon P., we reversed the local board's decision because the student was only given notice that he had violated a local board policy and it did not provide him with any particulars. The notice in the instant case is similarly defective. It does not state when or where the violation occurred, what type weapon was involved, or what the Student did that constituted a violation. Without this information, the Student is unable to prepare a defense.

Even though sufficient evidence was presented during the hearing to establish that the Student had violated the Local Board's policy, the sufficiency of the notice has to be determined as of the time it is issued, and not upon what evidence is later presented at the hearing. The purpose of the rule is to protect the innocent from having to go into a hearing without the ability to prepare a defense when they do not know what is facing them. In the instant case, the Student's parents felt they were being denied access to information to such an extent that they did not participate in the hearing and did not permit the Student to participate. The requirement that school systems provide notice of the dates, times, places, and actions that constitute an offense is not a burdensome requirement, especially where the school system is seeking to permanently expel a student. In this case, we conclude that the Local Board's failure to provide such information denied the Student due process.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board denied the Student due process because it failed to provide him with adequate notice of the charges. Accordingly, the Local Board's decision is reversed and the case is remanded to the Local Board to provide notice and a hearing consistent with this decision.

This 14th day of September, 1995.

Mr. McGlamery and Dr. Thomas were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals