

**STATE OF GEORGIA**

<b>DRAYMOND S.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1995-43</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>BIBB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by Draymond S. (Student) from a decision by the Bibb County Board of Education (Local Board) to uphold the decision of a Disciplinary Hearing Officer to expel the Student for one year because he was in possession of a gun while on campus. The Student claims that the evidence was insufficient to sustain the Hearing Officer's decision, the Hearing Officer erred in excluding the testimony of a witness, and the Hearing Officer improperly prejudged the case. The Local Board's decision is sustained.

On May 1, 1995, the Student was involved in a fight with another student while a third student watched. During the fight, a gun fell out of the Student's pocket. The Student denied that he was the one who had the gun, but three witnesses, which included the other student in the fight, testified that the Student was the one who had the gun. The Student went after the other two students when they picked up the gun and took it to a nearby coach. An assistant principal and the coach testified that the two students who recovered the gun were visibly shaken by its presence. Both of the students testified that the Student was the one who dropped the gun. Another student testified that he observed the fight and the Student was the one who had the gun. At the conclusion of the hearing, the Hearing Officer permitted the two students to return to class. When the record was closed, the Hearing Officer ruled that the Student had violated the Local Board's rule that prohibits possession of firearms on campus and he expelled the Student for one year.

The Student appealed to the Local Board, which upheld the Hearing Officer's decision. The Student then appealed to the State Board of Education.

On appeal, the Student claims that there was no probative evidence that he was the one who was in possession of the gun. "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)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In this case, the testimony of the two students who were present at the fight, plus the testimony of another student who observed the fight, was direct evidence that permitted the Hearing Officer to conclude that the Student was the one who possessed the gun. The State

Board of Education, therefore, concludes that there was evidence to support the Hearing Officer's decision.

The Student next claims that the Hearing Officer erroneously excluded the testimony of another witness, Chris, who testified that the Student did not have a gun, but that the gun came from a book bag that was struck while the two students were struggling. There was evidence presented that Chris was not present at school on the day the fight occurred. The Hearing Officer was the trier of fact and as such it was his responsibility to determine the credibility of the witnesses. Based upon the evidence available, the Hearing Officer did not find Chris' testimony credible. The State Board of Education concludes that this claim is without merit.

The Student finally claims that the Hearing Officer prejudged the case by permitting the other two students who were involved in the fight to return to class before the hearing was concluded. The Hearing Officer, however, had received all of the evidence when the decision was made; the hearing was continued only to permit the addition of the attendance record to show that the witness Chris was not present at school on the day the fight occurred. The hearing, therefore, was over and the Hearing Officer was in a position to make a decision. The State Board of Education concludes that the Hearing Officer's action does not evidence any prejudgment of the case and the Student's claim is without merit.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Hearing Officer's decision and the Local Board's decision, and the Hearing Officer did not err by discounting the testimony of a witness, or by permitting two of the students who were involved in the fight to return to class. The Local Board's decision, therefore, is  
SUSTAINED.

This 9<sup>th</sup> day of November, 1995.

Mr. Brinson, Ms. Keeton, Mr. Sessoms and Mr. Williams were not present. The seat for the Tenth District is vacant.

Richard C. Owens, Chairman State Board of  
Education