

STATE BOARD OF EDUCATION

STATE OF GEORGIA

N. L.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1999-73
	:	
BROOKS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by N. L. (Student), a seven-year-old second grader, from a decision by the Brooks County Board of Education to permanently expel him from school because he brought a loaded .380-caliber semi-automatic pistol to school. The Student claims he was denied due process because the Local Board refused to grant a continuance to permit the Student's attorney time to prepare for a hearing. The Student also claims that the Local Board's decision results in an unconstitutional deprivation of an education for the Student. The Local Board's decision is reversed.

On November 3, 1999, the Student found a loaded .380-caliber semi-automatic pistol in his grandmother's house. He took the weapon to his second grade class. Late in the day, the weapon was discovered after another student reported to the teacher that the Student had the gun. Five days later, on Monday, November 8, 1999, the Local Board convened to hear charges that the Student brought a weapon on campus. An attorney, appointed as the Student's guardian ad litem, asked for a continuance because she had been appointed late on the previous Friday and had not had an opportunity to prepare for a hearing. The Local Board denied the continuance and the hearing proceeded. Midway through the hearing, the Student's mother said she wanted to enter an admission that the Student had a gun at school and wanted to know what punishment the Student would receive. The Local Board then voted to permanently expel the Student. The Student filed a timely appeal to the State Board of Education.

On appeal, the Student claims that the Local Board denied him due process because it refused to continue the hearing to permit his attorney time to prepare. The attorney was appointed by the juvenile court on Friday afternoon, November 5, 1999, and the hearing began at 6:00 p.m. on Monday afternoon, November 8, 1999. The attorney told the Local Board that she had insufficient time to prepare, she was unfamiliar with the process, and did not know whether witnesses should be called on behalf of the Student. The Local Board refused the continuance after the school system argued that all of the witnesses were available and a decision had to be made within 10 days. The record shows that notice of the hearing was not issued until November 5, 1999.

As argued by the Student, a 10-day rule exists for the benefit of a charged student,¹ and if a student wants to waive the requirement, there is no other statutory or due process obligation to hold the hearing within 10 days. Additionally, since the incident occurred on November 3, the Local Board had until November 13 to conduct the hearing within 10 days of the incident. The Local Board effectively limited the Student to one day to prepare for a hearing destined to control the rest of his life. The Student's attorney was unable to adequately prepare the Student's defense in one day. The Student's attorney informed the Local Board that the Student was undergoing psychiatric evaluations, that the Student's mother had asked for a special education evaluation for the Student, that witnesses were unavailable to be interviewed and subpoenas could not be issued in the short period between notice and the hearing.

The right to a hearing is meaningless if an adequate defense cannot be prepared because of the shortage of time. *See, Fair v. Balkcom*, 216 Ga. 721, 725, 119 S.E.2D 691, ___, (1961). The hearing becomes merely a perfunctory exercise designed to meet a procedural requirement. There is no necessity for a rush to judgment when the accused student, who is facing permanent expulsion, has requested a continuance to permit an appointed attorney time to prepare a defense.

The State Board of Education concludes that the Local Board's failure to grant a continuance to provide the Student's attorney time to prepare a meaningful defense resulted in a denial of the Student's due process right to have a meaningful hearing and the Local Board's decision must be reversed.

Because we have decided that the Local Board's decision must be reversed, we do not need to address the Student's claims that the Local Board's decision results in the unconstitutional deprivation of a public education.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board denied the Student due process. Accordingly, the Local Board's decision is hereby Reversed and the case remanded for the Local Board to reconsider with the appropriate notices given.

This 13th day of April 2000.

Bruce C. Jackson
Vice Chairman for Appeals

¹ In *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975), the Supreme Court stated that a student had a right to a hearing if suspended for more than 10 days.