STATE BOARD OF EDUCATION

STATE OF GEORGIA

N. L.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2001-05**
	:	
BROOKS COUNTY BOARD OF EDUCATION,	:	
	:	
	:	**DECISION**
Appellee.	:	

This is the second appeal by N. L., a seven-year-old second grader (Student), from a decision by the Brooks County Board of Education (Local Board) to permanently expel him because he brought a loaded .380-calibre semi-automatic pistol to school.[1] The Student claims that hearsay evidence was improperly admitted and relied upon, the Local Board has improperly denied him his constitutional right to an education, the punishment is not proportionate to the offense, and the Local Board failed to provide special education services. The Local Board's decision is sustained.

The Student argues that it was improper for the Local Board to receive hearsay evidence concerning statements he made to other students and his conduct with the gun, i.e., pointing it at other students and at his teacher's back. It was, however, admitted that the Student brought the loaded gun to school and had it in his book bag when it was searched. This evidence alone is sufficient to permit the Local Board to expel the Student without any reliance on any hearsay evidence. Because of the admissions, the State Board of Education concludes that there was no error in receiving the hearsay evidence.

The Student next claims that the Local Board's decision improperly denies him his constitutional right to a public education. The courts, however, have held that permanent expulsion does not deny a student of any constitutional right to a public education. "The Georgia Constitution has delegated the administration and management of local school districts to county and area boards of education. Ga. Const. of 1983, Art. VIII, Sec. 5, ¶¶ I. In OCGA § 20-2-754(c), the legislature has provided that in such matters, the local board 'may take any action it determines appropriate.'... It has been held consistently that the courts will not interfere with a local board's administration of its schools unless the board's actions are contrary to law or it appears that the board has grossly abused its discretion. Bedingfield v. Parkerson, 212 Ga. 654, 660(4) (94 S.E.2d 714) (1956); Colston v. Hutchinson, 208 Ga. 559, 560 (67 S.E.2d 763) (1951); Keever v. Bd. of Ed. of Gwinett County, 188 Ga. 299, 300(1), 302 (3 S.E.2d 886) (1939). We

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[1] *See, N. L. v. Brooks Cnty. Bd. of Educ.*, Case No. 1999-73 (Ga. SBE, Apr. 13, 2000)(Local Board reversed for failure to grant continuance).

find neither in this case. Given that the constitutional right to a free public education may be limited by statute and our determination that the applicable statute does not prohibit permanent expulsion, we hold that the board's action was not contrary to law. In so holding, we must reject [the Student's] argument that permanent expulsion conflicts with or violates Georgia's compulsory school attendance statute, OCGA § 20-2-690.1." *D. B. v. Clarke County, Etc.*, 220 Ga. App. 330, 333, 469 S.E.2d 438 (1996). The State Board of Education, therefore, concludes that the Local Board acted within its authority in expelling the Student.

The Student next claims that the punishment was not proportionate to the offense committed. In *D. B. v. Clarke County, supra*, the student was permanently expelled for bringing a knife to school. We cannot, therefore, say that permanent expulsion for bringing a loaded pistol to school is disproportionate to the offense. We are, however, concerned whether a seven-year old has the requisite ability to know the consequences of his actions such that permanent expulsion is a necessity. This decision, however, is for the Local Board to make and the State Board of Education will not substitute its judgment for the Local Board's judgment. Accordingly, the State Board of Education concludes that the punishment was proportionate to the offense and the Local Board did not abuse its discretion in deciding upon permanent expulsion.

The Student also claims that he was improperly denied special education services and would not have taken the action he did if the school system had previously acted upon his special education needs. The Student's mother testified that he had been diagnosed as having attention deficit, hyperactivity disorder. The Individuals With Disabilities Act, 20 U.S.C. Secs. 1400 *et seq.*(P. L. 94-142) (IDEA) has specific provisions for the identification of and provision of services to students who need special education services. IDEA also contains provisions for challenging the failure to provide special education services that do not provide the State Board of Education with any jurisdiction to consider such challenges. The Student was never identified under IDEA as having any special education needs except speech therapy, which he was receiving. The State Board of Education concludes that the Local Board did not improperly deny the Student any special education services.

Based upon the foregoing, it is the opinion of the State Board of Education that there was some evidence to support the Local Board's decision, the decision did not deny the Student any of his constitutional rights and was within the authority and discretion of the Local Board. Accordingly, the Local Board's decision is
AFFIRMED.

This _____ day of January 2001.

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Bruce Jackson
Vice Chairman for Appeals