

STATE BOARD OF EDUCATION

STATE OF GEORGIA

D. S.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-44
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by D. S. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of the student disciplinary tribunal that she was guilty of bringing an air-gun on campus. The Student did not receive any punishment because she is enrolled as a special education student. Instead, she was referred for an individualized educational plan review under the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA). Since the Student has not received any punishment, there is no relief that the State Board of Education can provide the Student, which renders her appeal moot.

The Student qualifies for and receives services under the provisions of IDEA. On February 2, 2004, the Student entered her classroom with an air-gun pistol in the pocket of her jacket. The air gun was approximately nine inches long. The Student claimed she did not know the air gun was in the jacket, although the barrel was sticking out of the pocket approximately four inches. The Local System charged the Student with possession of a weapon on campus.

On February 10, 2004, in a meeting with the Student's parents and attorney, the Local System set a hearing date of February 23, 2004 to consider the charge against the Student. On February 20, 2004, the Student's attorney asked for a continuance because there was insufficient time to issue subpoenas and review the records. The Local System declined to grant a continuance and the hearing was held on February 23, 2004 without the Student, her parents, or attorney being in attendance. The tribunal found the Student guilty of bringing a weapon on campus, but, since the Student is disabled under the provisions of IDEA, referred the Student to an individualized educational program committee to decide whether the Student's educational program should be changed in view of her conduct.

The Student appealed the tribunal's finding of guilt to the Local Board, which upheld the tribunal's finding. The Student then appealed to the State Board of Education

on the grounds that she was denied due process because the Local System failed to grant her a continuance and because she was not granted timely subpoenas.

Regardless of the Student's claims, she has not been aggrieved by the decision finding her guilty of possessing a weapon since she has the protection of IDEA, which requires a separate determination of whether any disciplinary measures can be taken. The Student's appeal, therefore, is moot because she has not been harmed by the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student's appeal is moot because the State Board of Education cannot provide her with any relief since she is not being punished for her actions. Accordingly, the appeal is hereby
DISMISSED.

This _____ day of July 2004.

William Bradley Bryant
Vice Chairman for Appeals