

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>E. W.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2006-02</b>
	:	
<b>DOUGLAS COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by E. W. (Student) from a decision by the Douglas County Board of Education (Local Board) to expel the Student permanently from school after he was found guilty by a student disciplinary tribunal of bringing weapons on campus, possessing drugs, and creating a disturbance in the school. The Student claims that he was denied procedural and substantive due process because the hearing before the tribunal was held when he was not present. In addition, he claims there was no intent to bring either weapons or drugs onto the campus. Finally, the Student claims that his expulsion is a violation of the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* (the "Act" or "IDEA"). The Local Board's decision is sustained.

On January 24, 2005, the principal and an assistant principal found an air gun with ammunition, a damp marijuana cigarette butt, and marijuana seeds and residue in the Student's car. They then searched the Student's book bag and found a knife with 3-inch blades on both ends, a counterfeit identification card, and a can of smokeless chewing tobacco. The Student was charged with possession of weapons on the campus, possession of drugs on campus, disruption of school, and the commission of a criminal act on campus.

After an initial continuance and an agreement between the attorneys for both sides, a hearing was scheduled for Thursday, March 3, 2005. On the Friday before the hearing, the Student advised the school system that he had engaged the services of a new attorney, who wanted a continuance because of a conflict with the March 3, 2005, hearing date. The school system refused to agree to a continuance because of the previous continuance and the agreement between the attorneys to hold the hearing on March 3, 2005. Additionally, the hearing date was set before the new attorney was employed, which meant that the attorney took the employment with the knowledge that representation could not be provided.

On the day of the hearing, the attorney representing the school system called the chambers of the judge where the Student's new attorney was supposed to be appearing

and learned that the conflicting case had been settled, thus freeing the Student's new attorney to attend the hearing. Nevertheless, neither the Student nor the Student's new attorney appeared for the hearing. After unsuccessful attempts to contact both the Student and the Student's new attorney, the hearing officer ruled that the hearing would go forward.

The school system presented testimony about the finding of the weapons and drugs in the Student's car and book bag. The tribunal found the Student guilty of the charges and permanently expelled the Student. The Local Board upheld the tribunal's decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

The Student claims that he was denied due process because the hearing was held without his presence, thus denying him the ability to present witnesses, cross-examine witnesses, and have an attorney represent him. The Student, however, had notice of when the hearing was scheduled, had the opportunity of attending, presenting evidence, cross examining witnesses, and having counsel represent him. A second continuance was never granted. The Student, instead, voluntarily chose not to avail himself of his due process rights by failing to appear at the hearing. The Local Board cannot be faulted for the Student's own acts. The State Board of Education, therefore, concludes that the Local Board did not deny the Student due process by proceeding with the hearing when the Student chose not to attend with the knowledge of when the hearing was scheduled and without a valid excuse or an emergency.

The Student claims that there was no evidence that he intended to bring the weapons on campus or that he used the drugs. "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). There was evidence that the Student was the driver of the car and the marijuana cigarette butt found in the car was still damp, evidence that would permit a fact finder to find that the Student was aware of the drugs. Additionally, the Student admitted that there was a gun in his car before the gun was found, which belies his lack of knowledge claim. The knife was found in a book bag with a can of smokeless tobacco that had a current date stamp on it. From this fact, a fact finder could conclude that the knife had not "long been forgotten," as claimed by the Student.

The Student also claims that his expulsion violates the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* (the "Act" or "IDEA"). The Student, however, was not enrolled as a special education student and thus is not eligible for any of the protections of the Act.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student due process and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of September 2005.

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William Bradley Bryant  
Vice Chairman for Appeals