

STATE BOARD OF EDUCATION

STATE OF GEORGIA

Z.W.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2009-08
	:	
CHEROKEE COUNTY BOARD	:	DECISION
OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Z.W. (“Student”) from a decision by the Cherokee County Board of Education (“Local Board”) to suspend the Student from school for the remainder of the 2007-2008 school year and the first semester of the 2008-2009 school year with the option of attending Crossroads, the Local Board’s alternative school. Specifically, the Local Board found that the Student violated the Local Board’s rules for attempting to bring illegal drugs, cigarettes and drug paraphernalia, and a knife on a school sponsored field trip.

I. FACTUAL & PROCEDURAL BACKGROUND

The Student attends Cherokee High School. On February 15, 2008, the Student planned to travel on a school-sponsored field trip to Washington D.C. The school Principal received a tip from the mother of a student that some students were planning on bringing drugs on the field trip. The Principal deduced that it was possibly four male students, leading her to question the Student about the contents of his bag. In doing so, the Principal found marijuana, a pipe, rolling papers, and grinders with marijuana residue in the Student’s bag. In addition, the Principal found a knife in the Student’s shaving kit.

On February 28, 2008, the Student was notified that the Principal was recommending his expulsion from school. The Student was further notified that he would be provided a hearing on March 7, 2008, at which he had the right to have an attorney. On March 7, 2008, the Student’s hearing was scheduled before a tribunal. The Student retained an attorney for the hearing. However, at the hearing, the Student informed the hearing officer that he had decided to proceed without his attorney present. The Student’s parents were also present at the hearing.

II. ERRORS ASSERTED ON APPEAL

A. Due Process – Denial of Attorney.

The Student asserts that his due process rights have been violated because he was denied the right to an attorney. This assertion is without merit. The Student was notified of his right to have an attorney. The Student retained an attorney. However, the Student voluntarily decided to move forward with the hearing without his attorney. The parents were also present. The record is devoid of any evidence showing that the Student did not voluntarily decide to proceed with the hearing without his attorney.

The Student contends that he proceeded with his hearing based upon the promise by the Principal that she would only recommend an expulsion for the remainder of the 2007-2008 school year. The record is devoid of any evidence to support this assertion. To the contrary, the record shows that the Principal testified that she was recommending expulsion for the remainder of the 2007-2008 school year and the first semester of the 2008-2009. The Student did not cross-examine the Principal regarding this testimony despite the Student's contention that it is contrary to her alleged expressed promise prior to the hearing.

Furthermore, the decision of the tribunal was issued on March 7, 2008. The Student, through his attorney, appealed the tribunal's decision to the Local Board on March 27, 2008. In the appeal to the Local Board, the attorney for the Student did not assert due process violations based upon the alleged promise and did not offer any evidence to support this contention. On March 31, 2008, the Local Board advised counsel for the Student that he or his client could submit any additional information to support the appeal to the Local Board. Neither the Student nor his counsel submitted any additional evidence supporting the alleged promise by the Principal.

Moreover, even assuming that the Student proceeded with the hearing based upon the alleged promise by the Principal, this Board has previously found that a student's due process rights were not violated where the student did not retain an attorney in reliance upon a school administrator's representation that the student did not need an attorney. K.K. v. Gwinnett County Bd. of Educ., Case No. 2000-04 (Ga. SBE, May 2000). For these reasons, the Local Board did not violate the Student's due process rights.

B. Possession of the Knife.

The Student contends that he did not knowingly bring the knife to school. The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976).

In this case, the Student testified that he keeps the pocket knife in his shaving kit in his bathroom on a permanent basis. Based upon this statement, the record contains admissible evidence showing that the Student knew that the knife was in his shaving kit. Moreover, the Student further testified that he packed the shaving kit for the field trip unaware that the knife was in the kit. The Student told the Principal that his mother packed his shaving kit. Based upon these contradictory statements, the record contains admissible evidence from which the Local Board could conclude that the Student knew or should have known that the knife was in his bag.

Furthermore, the Student was also expelled for possessing illegal drugs, cigarettes, and drug paraphernalia which he was attempting to take on a school field trip. Thus, the decision of the Local Board is supported by admissible evidence, regardless of whether the Student knowingly brought the knife on the field trip. Thus, this assertion is without merit.

C. Level of Punishment.

The Student asserts that the discipline he received is excessive and violates progressive discipline pursuant to O.C.G.A. § 20-2-735(d). “The State Board of Education . . . cannot adjust the level or degree of discipline imposed by a local board of education.” B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 1998). Furthermore, the Student’s reliance upon O.C.G.A. § 20-2-735 is misplaced. O.C.G.A. § 20-2-735 pertains to disciplinary issues related to the learning environment at school. Contrary to the Student’s assertion, Georgia law¹ provides the Local Board with the authority to enforce code of conduct violations through a disciplinary tribunal. See O.C.G.A. § 20-2-750 *et seq.* Thus, the Student’s contention is without merit.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of October 2008.

¹ In fact, Georgia law provides for the expulsion of a student for one calendar year for bringing a weapon to school. O.C.G.A. § 20-2-751.1(a). The Local Board may modify the punishment on a case-by-case basis. O.C.G.A. § 20-2-751.1(b). The Local Board apparently modified the punishment in this case by reducing the length of the expulsion.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS