

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. D.,	:	
	:	
Appellant,	:	CASE NO. 2009-34
	:	
vs.	:	
	:	
SAVANNAH-CHATHAM COUNTY	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by J. D. (Student) from a decision by the Savannah-Chatham County Board of Education (Local Board) to expel him for one year after finding him guilty of possessing a weapon on campus. The Local Board’s decision came after a student disciplinary hearing officer refused to expel the Student. The Local Board’s decision is reversed.

On October 6, 2008, the Student attended football practice after school. While the Student was dressing following practice, three of his friends, whom he drove home each day, gathered at his car in the parking lot. One of the friends, A. G., discovered a BB-gun along the side of the road and asked the other two if they knew whose gun it was, but they did not know who owned the gun. A. G. then approached another student, S. M., an underclassman. The evidence was disputed about what then happened. S. M. claimed that A. G. threatened him, while A. G. claimed he merely asked S. M. if he knew who owned the gun. When S. M. said he did not know who owned the gun, A. G. went back to the Student's car. When the Student arrived, he drove the other three students home. At some point during the drive, A. G. threw the gun into the back seat, which was when the Student became aware of the gun. S. M. reported the incident to his parents, who reported it to the school administration the next morning. School resource officers searched the Student's car but did not find any weapon. Nevertheless, the Student was charged with disobeying school rules, having a weapon on campus, and terrorizing another student and a student disciplinary tribunal was convened with the school principal recommending a one-year suspension of the Student.

During the tribunal hearing, the school dropped the terrorizing charges because of a lack of evidence that the Student ever made any terrorizing threats. After the hearing, the hearing officer decided against upholding the principal's recommendation without making any findings of fact. The principal appealed the hearing officer's decision to the Local Board. The Local Board reversed the hearing officer's decision and expelled the Student for one year. The Local Board found that the Student knew the BB-gun was in

his car and that he admitted the gun was in his possession within a school safety zone. The Student then appealed to the State Board of Education.

On appeal, the Student claims there was no evidence he knew there was a gun in his car while he was on campus. The Local Board claims that the Student admitted he was aware of the BB-gun while he was on campus.

"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). In the instant case, however, there was no evidence presented that the Student was aware of the BB-gun while his car was on campus.

The Local Board has the burden of proof, which it did not carry in this case. The hearing officer's rejection of the principal's recommendation constituted a finding that the Student did not have a gun on campus. The Local Board cannot go behind this finding and make its own findings. The Local Board did not have the benefit of listening to the witnesses and making a determination about the truthfulness of the witnesses.

The closest statement from which one might guess that the Student was on campus was the Student's statement that, "I did not discover it [the gun] until we first were leaving the school." This statement, however, does not place the automobile on campus at the time of the Student's discovery that someone in his car had a gun, and a decision to expel a student for one year cannot rest on conjecture. There was no other testimony that placed the car on campus when the Student learned about the gun. In the absence of any evidence that the car was on the campus of the school, the Local Board's reversal of the hearing officer's decision was err.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision. The Local Board's decision, therefore, is hereby REVERSED.

This _____ day of May 2009.

William Bradley Bryant
Vice Chairman for Appeals