

STATE BOARD OF EDUCATION

STATE OF GEORGIA

D. P.,	:	
	:	
Appellant,	:	CASE NO. 2009-63
	:	
vs.	:	
	:	
WALTON COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by D. P. (Student) from a decision by the Walton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until March 12, 2010, after finding him guilty of possessing a gun on school property. The Student claims that there was no credible evidence that he had a gun on school property. The Local Board’s decision is sustained.

On February 25, 2009, school administrators learned that the Student, a 13-year old seventh grader, had shown a gun to another student on the bus while on the way home the previous day. When questioned by his principal about having a gun at school, the Student admitted he had the gun at his brother’s bus stop, but he initially denied he had a gun at school or on the bus. The Student then admitted he had a gun on the bus on the way home from school. He also told his principal that he placed the gun on top of a cabinet in his home. When the Student’s principal pointed out the inconsistency in the Student’s claim that he did not have a gun at school but had a gun on the bus on the way home from school, the Student then recanted his admission that he had a gun on the bus. The school resource officer recovered a .40-calibre pistol from the Student’s home in the location identified by the Student. The principal charged the Student with possession of a weapon on school property and sent the matter to a student disciplinary tribunal for a hearing.

At the hearing before the student disciplinary tribunal, the Student elicited testimony from the school resource officer that he did not see a gun on a video recording of the Student on the bus. Neither the school system nor the Student introduced the video tape into evidence.

The student disciplinary tribunal found the Student guilty of possessing a weapon on school property and expelled him from school for 180 days until March 13, 2010. The Local Board upheld the tribunal decision when the Student appealed and the Student then appealed to the State Board of Education.

The Student claims that the tribunal decision was arbitrary and capricious because there was no credible evidence that he had a weapon on school property. The Student claims that his confession was not a credible confession since he later denied he had a gun on the bus. "It is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 11, 1996). "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). "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 this instance, the tribunal chose to adopt the Student's statement that he had a gun on the bus. Because there was direct testimony about the Student's admission, the tribunal's decision was not arbitrary or capricious and there is evidence to support the decision.

The Student also claims that it was improper for the tribunal not to view the video tape and the failure of the school system to introduce the video tape has to be construed in his favor. The school resource officer, however, testified that the video tape did not show any evidence that the Student had a gun on the bus. The introduction of the video tape would not have added anything to the officer's testimony. Additionally, the Student did not request introduction of the tape as evidence, although the tape was readily available and could have been produced at the hearing. The State Board of Education, therefore, concludes that there was no error on the part of the tribunal not to view the video tape.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that neither the tribunal's decision nor the Local Board's decision was arbitrary or capricious, and there was evidence to support the decisions. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of September 2009.

William Bradley Bryant
Vice Chairman for Appeals