

STATE BOARD OF EDUCATION

STATE OF GEORGIA

TYRONE B.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1994-6
vs.	:	
	:	DECISION
HOUSTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

**PART I
SUMMARY**

This is an appeal by Tyrone B. (Student) from a decision by the Houston County Board of Education (Local Board) to uphold the decision of a Student Review Tribunal to permanently expel him after he was charged with involuntary manslaughter following the death of his cousin from a gunshot wound received when they were handling a gun in an apartment off campus after school hours. Appellant claims the Local Board's decision was arbitrary and capricious because there was no showing that he had to be expelled to maintain the safety of the other students. The Local Board's decision is reversed.

**PART II
FACTUAL BACKGROUND**

During the evening of October 29, 1993, the Student, who was sixteen years old and in the ninth grade, was involved in an incident that resulted in his first cousin being killed from a gunshot wound. The cousin had handed the gun to the Student and then reached for it when the Student said he was afraid of it. When the cousin grasped the gun, it went off. The Student was charged with involuntary manslaughter and was absent from school until November 5, 1993.

On November 5, 1993, the Student returned to school. During sixth period, the assistant principal told the Student that he was expelled from school pending a hearing before a Student Review Tribunal based upon charges that he violated Local Board Policy JCD, which says that a student can be expelled for:

an alleged assault or battery by a student upon another student, if, in the discretion of the school principal, the alleged assault or battery could justify the expulsion of the student.

At the Student Review Tribunal hearing, it was established that the Student had not been involved in any incident at the school except for a detention during the seventh grade. The principal and the assistant principal testified that they expelled the Student because they were afraid that something might happen at the school if the Student remained in school, that they had heard rumors some students were going to attack the Student, and that some parents had expressed concern that the Student was back in school. The Student testified that the other students were friendly during the short time he was at school on November 5, 1993, and that his deceased cousin's brothers had expressed concern about him and the effects of the incident.

The Student Review Tribunal voted to permanently expel the Student. Upon appeal to the Local Board, the Local Board voted to uphold the Student Review Tribunal's decision. The Student then filed a timely appeal to the State Board of Education.

PART III DISCUSSION

The Student claims on appeal that the Local Board's decision was arbitrary and capricious because there was no showing that the Student posed any threat to the operation of the school and the Local Board does not have jurisdiction to impose punishment based upon activities that occur off campus and after school hours.

"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 case, we hold that the Local Board's decision was arbitrary and capricious because there was no evidence that the Student posed any threat to the orderly conduct of the school, or that he posed or poses any threat to any other student.

The Local Board argues that it has the authority to administratively determine the Student's guilt or innocence of the involuntary manslaughter charge. The Local Board, however, did not attempt to prove that the Student was guilty. Instead, the Local Board, in effect, has taken the approach that the Student failed to prove that he was innocent. The Local Board's approach is wholly inconsistent with the American system of jurisprudence.

There was no evidence that the Student has ever been violent, that he ever involved himself in any altercations with other students, or that he posed any threat to the orderly operation of the school. Although the principal and vice principal testified that students and parents were talking about the incident, the testimony was uncorroborated hearsay testimony and cannot stand to support the truth of what the students or parents said. The sole basis for the Local Board's decision is the unsubstantiated and unsupported fear of the principal and assistant principal that something might happen in the future. Pure speculation cannot support the permanent expulsion of a student.

The State Board of Education concludes that the Local Board failed to establish any basis for permanently expelling the Student.

PART IV
DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board abused its discretion in permanently expelling the Student because he was charged with involuntary manslaughter without showing that the alleged crime resulted in any disruption to the control and management of the school. The Local Board's decision, therefore, is

REVERSED.

This 14th day of April, 1994.

Mr. Brinson, Mrs. King, Dr. Thomas and Mr. Williams were not present.

Richard C. Owens, Chairman
State Board of Education