

STATE BOARD OF EDUCATION
STATE OF GEORGIA

EUGENE D.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1994-44
vs.	:	
	:	DECISION
BURKE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Eugene D. (Student) from a decision by the Burke County Board of Education (Local Board) to uphold the decision of a Student Disciplinary Tribunal to permanently expel him because of repeated violations. The Student claims the Local Board denied him due process, the punishment is excessive and arbitrary, the decision violates his right to a public education, and the Local Board did not follow the statutory requirements of remediation. The Local Board claims the Student's behavior is so disruptive that the other students cannot learn. The Local Board's decision is reversed and remanded for consideration consistent with this order.

On February 8, 1994, the Student was suspended for being disrespectful and disruptive in a classroom. At the time, the Student was attending the Burke County Alternative School. The principal of the Alternative School recommended permanent expulsion because the Student had been involved in sixteen disciplinary incidents since the beginning of the 1993-1994 school year. The incidents included disrespect, use of profanity, talking without permission, refusing to comply with teacher requests, leaving classroom without permission, and disobedience. On February 17, 1994, the Local Superintendent wrote a notice to the Student's parent that he was charged with violating five Rules, and a hearing would be held to consider the Student's expulsion.

At the Tribunal hearing on February 28, 1994, the Student was asked whether he denied the charges made against him. The Student responded, "No." The Tribunal accepted the lack of a denial as an admission of guilt. The Tribunal then received testimony from the principal and two teachers to determine what discipline measures to impose. The Disciplinary Tribunal deliberated four minutes before deciding to permanently expel the Student. The Local Board subsequently upheld the decision of the Disciplinary Tribunal.

On appeal, the Student claims he was denied due process, the Local Board abused its discretion and imposed an excessive and arbitrary punishment upon him, and the Local Board improperly denied him a free public education. In addition, the Student claims the decision should be reversed because the Burke County School System failed to provide remediation as required by statute. Finally, the Student claims there was no evidence to support the decision of either the Disciplinary Tribunal or the Local Board. The Local Board argues that it provided the Student with alternative school and he is impossible to teach in the classroom, the notice was

proper, and the Student was not denied due process.

As we previously observed in Michael C. v. Houston Cnty. Bd. of Educ., Case No. 1992-19 (Ga. SBE, Sep. 10, 1992), permanent expulsion is a drastic response that seldom can be justified in instances where a student has not posed a threat to other students. In this case, there was no evidence the Student posed a threat to anyone.

There was no evidence in the record that the Local School System attempted to determine whether expulsion was the only reasonable alternative available for the Student's conduct. The testimony of the teachers and the principal discussed the Student's conduct in general terms, but there was no evidence that permanent expulsion was the only reasonable response to the Student's conduct. The Local School System used suspension as its main disciplinary response to the Student's actions before it recommended permanent expulsion. There was evidence of a conference with the Student's parent, but the conference consisted of conveying a threat that the Student would be expelled. There was no evidence whether the Local School System made any attempts to determine if the Student qualifies for special education services, or whether a student support team has ever been assigned to the student. The State Board of Education, therefore, concludes that the Local Board failed to establish that permanent expulsion is a reasonable response to the Student's misconduct.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board exceeded its authority in permanently expelling the Student without establishing that permanent expulsion is the only reasonable response to the Student's actions. Accordingly, the Local Board's decision is hereby reversed and remanded for consideration consistent with this order.

This 11th day of August, 1994.

Robert M. Brinson
Vice Chairman for Appeals