

**STATE BOARD OF EDUCATION**  
**STATE OF GEORGIA**

<b>WILLIAM J. E.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1996-7</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>GRIFFIN-SPALDLNG COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by William E. (Student) from a decision by the Griffin-Spalding County Board of Education (Local Board) to uphold the decision of a Student Disciplinary Tribunal to permanently expel him. The Student Disciplinary Tribunal's decision was made after the Student killed his cousin while they were playing a form of Russian roulette on a Sunday morning. The Student claims that the Local Board's policy is not applicable to his situation and that Student Disciplinary Tribunal's decision was based upon speculation. The Local Board's decision is reversed.

During the early morning hours of November 5, 1995, the Student, a 16-year-old ninth-grader at Griffin High School, and his cousin, who was also a student at Griffin High School, along with two other students, were riding in the Student's car. They stopped and one of the students got out of the car and went to a pay telephone across the street to call his girlfriend. While the other student slept in the back seat, the Student began playing with a .38-caliber pistol his cousin had taken from home. He removed three of the bullets from a six-round revolver, pointed the pistol at his cousin and pulled the trigger. Nothing happened. He then pointed the pistol at his own head and pulled the trigger again. Once again, nothing happened. The Student then pointed the pistol at his cousin again, pulled the trigger, and a bullet fired from the pistol, mortally wounding his cousin.

The Student was charged in juvenile court with two acts of delinquency: pointing a pistol at another and involuntary manslaughter. The Student later pleaded guilty to the involuntary manslaughter charge and was sentenced to 90 days detention.

The Local Board has a policy, Rule 11(h), that provides, in part:

(h) It is the intent of the Board of Education to discipline students who have engaged in off-campus misconduct at anytime during the year, including summer or other occasions when students are not attending class, based on the following circumstances:

(1) A student who has committed or allegedly committed any act off-campus which is prohibited by the Georgia criminal code and is punishable as a felony (regardless of whether the student has been arrested, charged, or convicted of the crime) and whose presence at school is likely to endanger other students or staff or cause disruption to the educational climate may be disciplined or expelled from school.

The principal of Griffin High School concluded that the Student's presence in school was likely to endanger other students or staff or cause disruption to the educational climate and he charged the Student with violating Rule 11(h) with the recommendation of permanent expulsion.

A Student Disciplinary Tribunal conducted a hearing on November 10, 1995. During the hearing, it was disclosed that the Student and his cousin were best friends and constant companions, the Student did not own a gun and had never threatened anyone with a weapon. The Student had been involved in several disciplinary matters in school. When he was in the seventh grade, the Student was involved in two scuffles on campus that involved physical contact with another student. The other incidents involved the failure to complete assignments, talking back to his teachers, and failing to show up for disciplinary detention. The principal of Griffin High School testified that he felt the Student's presence in school was likely to endanger other students or staff or cause disruption to the educational climate.

The Student Disciplinary Tribunal found that the Student had violated Rule 11(h) and permanently expelled the Student. The Student appealed to the Local Board, which, on December 11, 1995, upheld the Student Disciplinary Tribunal's decision. The Student then appealed to the State Board of Education.

On appeal, the Student argues that Rule 11(h) establishes two criteria: (1) the commission of an act that is punishable as a felony, and (2) a finding of endangerment to other students or staff. The Student claims that Rule 11(h) is not applicable to his situation because he was charged with an act of delinquency, which is not punishable as a felony. Under the Student's interpretation, the Rule applies only in those instances where a juvenile commits an act that results in a felony prosecution. Even if Rule 11(h) applies to his situation, the Student argues that there was no evidence beyond the mere speculation of the principal that he represented any threat to the other students or the staff of Griffin High School.<sup>1</sup>

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<sup>1</sup> The Student did not challenge the constitutionality of Rule 11(h).

Under the Georgia Criminal Code, a juvenile can be charged with a felony only in instances where the juvenile's act constitutes a "designated felony" under the provisions of O.C.G.A. § 15-11-37 (e.g., unlawful possession of a pistol or revolver, kidnapping or arson in the first degree, aggravated assault, arson in the second degree, attempted murder). If an act by a juvenile is not a designated felony, the Legislature has declared that such acts are deemed to be acts of delinquency and any "order of disposition or other adjudication in a proceeding under [the Georgia Juvenile Code] is not a conviction of a crime and does not impose any civil disability resulting from a conviction nor operate to disqualify the child in any civil service application or appointment." O.C.G.A. § 15-11-3 8(a). Thus, in the instant case, the Student was charged with an act of delinquency and not with a felony.

The Local Board argues that involuntary manslaughter is a felony charge, regardless of whether a juvenile can be charged with a felony. As a consequence, the Local Board argues that Rule 11(h) applies to the Student's situation. The Local Board's argument, however, fails to consider the plain wording of the Rule, which requires an act that "is punishable as a felony." As pointed out by the Student, involuntary manslaughter is punishable as a felony only if committed by an adult; it is not punishable as a felony if committed by a juvenile. If the Rule was intended to cover juvenile acts punishable as a felony if committed by an adult, in addition to designated felonies, then the Local Board could have so phrased the Rule. As it is presently worded, Rule 11(h) only reaches acts punishable as a felony, i.e., designated felonies. The State Board of Education, therefore, concludes that Rule 11(h) does not apply to the Student's situation and the Local Board acted without its authority.

In addition to our conclusion that Rule 11(h) does not apply to the Student's situation, we also conclude that there was no evidence presented that the Student's presence in school endangered other students or staff or caused, or was likely to cause, any disruption to the educational climate. In *Tyrone B. v. Houston Cnty. Bd. of Educ.*, Case No. 1994-6 (Ga. SBE, Apr. 14, 1994), which also involved the permanent expulsion of a student charged with the manslaughter death of another student, the State Board of Education reversed the local board's decision to expel a student because, among other things, there was no evidence that the student had ever been violent or "involved himself in any altercations with other students, or that he posed any threat to the orderly operation of the school." Additionally, the State Board of Education stated,

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 Local Board argues that the Student's previous disciplinary record of disrespect and two physical altercations during the 1993-1994 school year, combined with the manslaughter, establish that the Student represents a likely endangerment of other students or staff. The Local Board's argument, however, simply begs the question. There was no showing that the Student has ever threatened anyone, with or without a weapon, or that any of his in-school conduct represented a threat to anyone, or that the manslaughter death of his best friend represented a threat to anyone in school. The Student's two physical altercations involved "horseplay in [the] gym ... that got out of hand," and the Student's response after he was slapped by a girl, neither of which evidence any threat to other students or staff. The only evidence that the Student represents a threat to other students or staff was the principal's feeling that such a threat existed. The State Board of Education, therefore, concludes that there was no evidence to show that the Student should be permanently expelled.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's rule is inapplicable to the Student's actions and the Local Board acted without authority. The Local Board's decision, therefore, is hereby REVERSED.

This 9<sup>th</sup> day of May, 1996.

Ms. Barbara King, Mr. Dick Owens, Ms. Julie Keeton, Mr. Walt Sessoms and Mr. Ed Floyd were not present.

Robert M. Brinson  
Vice Chairman for Appeals

