

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MICHAEL C., :
 :
 Appellant, :
 v. : CASE NO. 1993-27
 :
 HOUSTON COUNTY : DECISION
 BOARD OF EDUCATION, :
 :
 Appellee. :

This is an appeal by Michael C. (Student), a fifteen-year-old eighth grade student, from a decision by the Houston County Board of Education (Local Board) to permanently expel him from the Houston County Public School System because he was involved in a fight on a bus with another student while attending alternative school. The Local Board’s decision is reversed and remanded with direction to comply with the Order of the Superior Court for consideration of alternatives.

This is the second appearance of this case before the State Board of Education. See, Michael C. v. Houston Cnty. Bd. of Educ., Case No. 1992-19 (Ga. SBE, Sep. 8, 1992) (Michael I). In Michael I, we reversed the Local Board’s decision to expel the Student because of the disparity between the offense and the penalty. The Local Board appealed to the Superior Court, which entered an Order “that the within and foregoing matter be remanded to appellee [Houston County Board of Education] and for them to consider all punishment alternatives.” Order of Judge L. A. McConnell, Jr., Case No. 92-V-45636-M (Houston Cnty. Sup. Ct., Apr. 2, 1993). On May 11, 1993, the Local Board held another hearing. At the conclusion of the hearing, the Local Board voted again to permanently expel the Student.¹

The Local Board makes the same arguments It made in Michael I: the Student was aware of the rules, the rule is reasonable, he broke the rule and all alternatives were exhausted; therefore, the Student needs to be permanently expelled. During the hearing, however, the Local Board did not explore any alternatives. Instead, the Local Board received evidence about the Student’s history – the same evidence that was received during Michael I. The Student’s probation officer was asked whether the Student qualified for special education, but the probation officer was not qualified as an expert to give an opinion on the Student’s special education needs.

¹ It appears from the briefs that the Local Board did not re-admit the Student, notwithstanding the decision in Michael I and the lack of any Order from the Superior Court staying the decision. The Student, therefore, has been out of school for more than one year.

Over objection, the Local Board also permitted in evidence that the Student had been picked up on a weapons possession charge while he was not in school. The Local Board claims that it had the right to consider this evidence to determine whether the Student should be returned to school. The issue before the Local Board, however, was not whether the Student should have been returned to school, but what alternatives existed for keeping him in school. There was no evidence that the Student had been in possession of a weapon. He was picked up, questioned, and released. Even in an administrative hearing, questioning does not establish guilt. The evidence was irrelevant and completely prejudicial to the Student receiving a fair hearing.

In Michael I, we held that the Local Board abused its discretion by permanently expelling the Student. The Superior Court did not reverse that decision, but, instead, ordered the Local Board to consider other alternatives. Instead of arriving at an alternative solution, the Local Board merely made the same decision it made in Michael I – permanent expulsion. The Local Board's latest decision is in violation of both this Board's previous decision and the Order of the Superior Court, both of which required the Local Board to arrive at some other solution than permanent expulsion.

Based upon the foregoing, it is our opinion that the Local Board is in violation of our decision in Michael I, and permanent expulsion is an abuse of discretion. Accordingly, the Local Board's decision of May 11, 1993, is hereby REVERSED AND REMANDED with direction to comply with the Order of the Superior Court for consideration of alternatives.

This 9th day of September, 1993.

Mrs. King, Mr. Sears, Mr. Shurbutt and Dr. Thomas were not present.

Robert M. Brinson
Vice Chairman for Appeals