

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BILL M.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1995-40
vs.	:	
	:	DECISION
DEKALB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Bill M. (Student) from the May 18, 1995, decision of the DeKalb County Board of Education (Local Board) to uphold the decision of a Student Disciplinary Tribunal to suspend the Student until May 5, 1995, complete 20 hours of community service by May 27, 1995, and make restitution of \$800.00 because the Student Disciplinary Tribunal found that the Student had improperly accessed a school computer and left inappropriate messages and pictures in the computer. The Student claims that the evidence does not support the charges. In addition, the Student claims there were procedural errors in the conduct of the hearing that denied him due process. The Local Board's decision is reversed.

The Student, a fifteen-year-old tenth-grader, was in a computer class under an independent study program. The Student's teacher became concerned when the computers in the class began responding in unexpected ways. The teacher called the computer para-technologist to investigate. The para-technologist determined that the students in the class had accessed the terminal maintenance or set-up program, which required the use of a password, and changed some of the information relating to the individual terminals. The para-technologist printed a log of each terminal and found that the password was first entered successfully at the Student's terminal. As a result, the Student was charged with violating the Local Board's Rule 6, which addresses the destruction of school property.

The matter was referred to a Student Disciplinary Tribunal for a hearing.

The Student Disciplinary Tribunal met on April 19, 1995. During the hearing, the Student testified that he encountered a screen that asked for a password. He asked his teacher if she had the password and she told him that she did not know the password, but she suggested several possible passwords. The Student returned to his terminal and entered seven different passwords. The last password granted him access to some additional application programs. The Student's teacher denied she had given or suggested a password to the Student. The Student testified that he gave the password to a friend in another class and a student who sat behind him may have seen him enter the password at his terminal. Nevertheless, other students in the class became aware of the password and it was used on twenty-eight of the thirty computers in the lab.

The school system did not present any evidence that any changes were made at the Student's terminal, nor did it present any evidence that the Student accessed and made changes to any of the other computers in the classroom. Additionally, there was no evidence that the Student had been told there were application programs on his computer that he was not supposed to access. Nevertheless, the Student Disciplinary Tribunal found that the Student had violated Rule 6. The Tribunal suspended the Student until May 5, 1995, required him to complete twenty hours of community service by May 26, 1996, or receive an additional five—day suspension, and imposed an \$800.00 restitution requirement. When the Student appealed to the Local Board, the Local Board upheld the Tribunal's decision. The Student then made a timely appeal to the State Board of Education.

On appeal to the State Board of Education, the Student claims that the evidence did not support the charges. The Local Board argues that there was some evidence to support its decision and the decision, therefore, must be upheld. We agree with the Student that there was no evidence to support the charges.

The Local Board's Rule 6 prohibits the

Destruction of ... school or public property which may include such actions as: ... tampering with and/or destruction or alteration of computer programs and/or data, using an unauthorized network userid, attempts to break into the school system computer network.

Student Handbook, p. 5.

The Local Board did not present any evidence that the Student altered any computer programs or data or that he attempted to break into the school system computer network. The only evidence presented was that the Student entered a password he should not have known on his computer terminal. There was no evidence that the students were told they should not attempt to access programs on their computers or that there were even programs on their computers they were not supposed to use.

There was evidence that some students had written notes that contained profanity, and there were some students who had made pornographic drawings that were stored on their computers. There was, however, no evidence that any of this material appeared on the Student's computer.

The Local Board argues that it is clear from the evidence that "someone violated policy 6A." The Local Board then argues that since the Student admitted that he knew the password, there was sufficient circumstantial evidence for the Tribunal to find that the Student was the one who entered the profanity and pornographic pictures in the other computers.

The only thing the Local Board's evidence shows is that the Student had an opportunity to make the changes. All of the other students, however, also had the same opportunity. The Local Board failed to present a single witness who testified that the Student entered anything on any computer other than his own, and there was no evidence that his computer contained any of the offensive material. There simply is no connection between what the Student had the ability to do and what was done when other students had the same ability.

The Student's admission that he obtained a password and gave the password to another student did not establish that he violated the Local Board's policy. The students were not told that they were prohibited from entering passwords into their computers, or that there were programs on their computers that they were not

supposed to access, or that they were prohibited from giving another student a password.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support the charges against the Student. The Local Board's decision, therefore, is REVERSED.

This 14th day of September, 1995.

Mr. McGlamery and Dr. Thomas were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals