

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>B. M.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 1999-55</b>
	:	
<b>FLOYD COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by B. M. (Student) from a decision by the Floyd County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to permanently expel him after finding him guilty of threatening to explode a bomb on campus. The Student claims that the Local Board's decision relies solely on hearsay evidence and cannot stand. The Local Board's decision is reversed.

On May 25, 1999, the Student was charged with making terroristic threats when some students allegedly claimed the Student said he had planted a bomb beneath a trailer. A student disciplinary tribunal hearing was held on June 3, 1999. During the hearing, evidence was presented that a teacher and a student observed the Student coming out from under a trailer that was located adjacent to the physical education field. Another teacher then observed the Student in a ditch that bordered the school grounds. When the teacher told the Student to get out of the ditch and go to the office, the teacher heard the Student counting backwards. The Student continued to count backwards all the way to the school building.

The Student testified that he went under the trailer to retrieve a football. He said he went into the ditch to avoid some students who were kicking him, and he was counting backwards as part of an anger management technique he had been taught.

Although the Student was charged with making a terroristic threat, the Local Board only presented hearsay evidence that some students reported that the Student said he was going to bomb anything. The tribunal, nevertheless, found the Student guilty and permanently expelled him from school. The Local Board upheld the decision when the Student appealed. The Student then appealed to the State Board of Education.

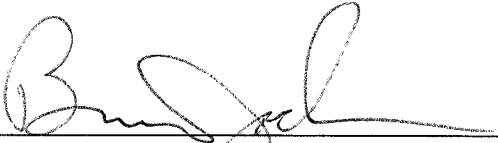
The State Board of Education follows the rule that if there is any evidence to support the decision of a local board of education, then that decision will be upheld upon review. In the instant case, however, the only evidence that the Student made any statement at all is the hearsay evidence that some students reported that a statement was made. Hearsay evidence, however, has no probative value and cannot be the sole basis for making any determination of fact. *See,*

*McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994). There is, therefore, no evidence that the Student made a terroristic threat.

The Local Board argues that the Student's actions of climbing under the trailer and counting backwards establishes that he made the terroristic threats. The Local Board's argument is without any merit. The Local Board failed to present any competent evidence that the Student even made a statement that might be considered a terroristic threat. The Local Board did not present the policies that the Student allegedly violated, which prevents the establishment of any possible relationship between the Student's actions and the accusations. The State Board of Education, therefore, concludes that the Local Board failed to carry its burden of proof and there was no evidence to support the charges against the Student.

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

This 13<sup>th</sup> day of July 2000.

  
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Bruce Jackson  
Vice Chairman for Appeals