

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. G.,

Appellant,

vs.

CASE NO. 1999-56

**WALTON COUNTY
BOARD OF EDUCATION,**

DECISION

Appellee.

This is an appeal by J. O. (Student) from a decision by the Walton County Board of Education (Local Board) to suspend him through the end of the 1998-1999 school year following his appeal from the decision of a student disciplinary tribunal to expel him until the end of the first semester of the 1999-2000 school year. The tribunal found that the Student was guilty of "inciteful behavior." The Student claims that the evidence did not support the charges, the Local Board did not have a policy that forbade the alleged statements he made, and the Local Board denied him due process. The Local Board's decision is reversed because the Student did not violate a policy of the Local Board, nor did he engage in any egregious conduct that warrants suspension under the Local Board's inherent powers.

On April 28, 1999, the Student was riding a bus with some other students to an ROTC class at another school. The students talked about a search that the police and school conducted at the beginning of the school day because of a bomb threat that had been made over the telephone. When the Student was asked whether he had been searched, he responded, "Yeah, like I carry a 45 to school." When asked why he had returned to the car he had ridden to school in, he responded that he had to put up his 45. The student he was talking with and several other students who overheard the remark understood the comment "as a joke," and that everyone was joking about the search. However, two students overheard the conversation and reported the Student's comments to the school authorities. The principal conducted an investigation and had the car searched to see if a weapon was on campus. No weapons were found, but the Student was charged with engaging in "inciteful behavior" and a tribunal held a hearing on the charge on May 17, 1999.

At the conclusion of the hearing, the tribunal found the Student guilty of the charge and expelled him through the end of the first semester of the 1999-2000 school year. The Student appealed to the Local Board and argued that the Local Board did not have a policy that addressed "inciteful behavior." The Local Board found the Student guilty of "threatening to possess a weapon" and suspended him through the end of the 1998-1999 school year. The Student then filed a timely appeal to the State Board of Education.

¹The Local Board has moved to dismiss the appeal as moot because the suspension period has passed. The Student, however, argues that the Local Board's decision keeps him from

being able to obtain admission to a senior ROTC program. This argument was also raised before the Local Board. The State Board of Education, therefore, concludes that the issues raised by the Student are not moot.

The Local Superintendent failed to include copies of the Local Board's policies that the Student was alleged to have violated. The Student argued that such policies do not exist and the Local Board has not denied this argument. The State Board of Education, therefore, concludes that the Local Board did not have any written policies to govern the Student's conduct.

The Student also claims he was denied due process because he was not given notice of the charges against him. The charge letters were not included in the record forwarded to the State Board of Education, but nothing that was included in the record indicates that the Student had any knowledge or indication that he was charged with threatening to possess a weapon. There is also nothing in the record to indicate what are the elements of either the offense of threatening to possess a weapon or the offense of inciteful behavior. Minimum due process requires the school system to inform the student of the charges made. *See, Goss v. Lopez*, 419 U.S. 565, 42 L. Ed.2d 725 (1975). The State Board of Education, therefore, concludes that the Local Board denied the Student due process because it failed to inform him of the charges made against him.

Finally, we observe that the Local Board of Education has attempted to discipline the Student for simply making a sarcastic response to a question posed by another student. While the events of Columbine High School and Heritage High School dictate an increased awareness of the potential for student violence, they do not operate to sanction the complete abrogation of the rights of free speech of students. Sarcasm may not be appreciated or understood, but it is not "inciteful" or amount to "threatening to possess a weapon."

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence that the Student violated any policy of the Local Board of Education and that the issues raised by the Student are not moot. Accordingly, the Local Board's decision is hereby REVERSED.

This \ ~A'~L~day of November 1999.

Bruc~so
Vice Chairman for Appeals

