

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. D.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1999-57
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by J. D. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend her from school until May 17, 1999, and to deny her bus privileges through the end of the 1999-2000 school year after finding her guilty of disrupting the school by telling a bus driver to stop so she could pick up some drugs, and then threatening the bus driver because the bus driver was interfering in her business. The Student claims that there was no evidence to support the tribunal's findings and the punishment is too harsh. The Local Board's decision is reversed because there was no evidence to support the charges against the Student.

On April 27, 1999, while riding a school bus home, the Student, a 10th grader, told the bus driver to drop her off before the bus arrived at her home so that she could pick up some drugs for her friends. The bus driver claimed that the Student later told the bus driver that the driver would be shot the next day as she entered the Student's neighborhood or when she arrived at school because she had interfered in the Student's business. The bus driver reported the incident to her superiors and the Student was picked up for questioning the next morning.

After an investigation, the Student was charged with violating the Local Board's rule 4(a), assault against the bus driver, and rule 11, subverting good order in the school. Based upon the testimony of the bus driver and the Student, a student disciplinary tribunal found the Student guilty of violating Rule 11 because of her comments regarding picking up some drugs. The tribunal suspended the Student until the following Monday, May 17, 1999, and suspended the Student from use of the buses until the end of the 1999-2000 school year. Upon appeal, the Local Board upheld the tribunal's decision, but also found the Student guilty of assault against the bus driver because of her comments regarding shooting the bus driver. The Local Board, however, did not change the discipline imposed. The Student then appealed to the State Board of Education on the grounds that the punishment was too harsh and the evidence did not support the tribunal's decision because there was conflicting testimony.

The Local Board's Rule 11 provides:

A student shall not perform any other act which is subversive to good order and discipline in the schools. This includes, but is not limited to, violation of local school rules, violation of state and

federal law, involvement in gang/hate related behavior, providing false information to school personnel, possession or use of paging devices (beepers) and electronic communications devices (including cellular telephones, radios and televisions), actions that are ethnically or racially inflammatory, loitering or trespassing or, community misconduct that would be so serious as to pose a threat to the school community.

To establish any violation of Rule 11, the school system has to show that the student (1) a violated some school rule, or state or federal law, or (2) was involved in gang/hate related behavior, or (3) provided false information, or (4) possessed or used a paging device, or (5) engaged in some ethnically or racially inflammatory action, or (6) loitered or trespassed, or (7) engaged in some community misconduct. There is nothing in Rule 11 that prevents a student from engaging in any form of speech that is not ethnically or racially inflammatory.

The record does not contain any evidence that establishes that the Student violated the Local Board's Rule 11. The Rule 11 charge was made because the Student made the comment that she wanted to be dropped off the bus to pick up some drugs. If the Student had picked up some drugs, there might have been a violation of the Local Board's rules, but the Local Board's Rule 11 does not prohibit a student's speech, even if the speech is about an illegal activity. The State Board of Education, therefore, concludes that there was no evidence to support a finding of guilt under Rule 11.

The Local Board also found the Student guilty of violating its Rule 4(a) based upon the alleged threat the Student made to the bus driver. The disciplinary tribunal, however, did not find the student guilty of violating Rule 4(a) and did not make any find of fact that would permit the Local Board to find a violation of Rule 4(a). During the hearing before the tribunal, the Student denied she made any threat and none of the other student witnesses testified that they heard a threat. By not finding the Student guilty of violating Rule 4(a), the tribunal effectively rejected the bus driver's testimony that the Student threatened her. In the absence of any findings of fact, the Local Board cannot arbitrarily go behind the tribunal and decide on the credibility of the witnesses. The State Board of Education, therefore, concludes that the Local Board erred in finding that the Student violated Rule 4(a).

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support a finding that the Student violated the Local Board's Rule 11, and the Local Board erred in acting as the finder of fact when it was in a review capacity. Accordingly, the Local Board's decision is
REVERSED.

This _____ day of November 1999.

Bruce Jackson
Vice Chairman for Appeals