

STATE BOARD OF EDUCATION

STATE OF GEORGIA

E. K.,

Appellant,

vs.

CASE NO. 2001-04

**GWINNETT COUNTY
BOARD OF EDUCATION,**

DECISION

Appellee.

This is an appeal by E. K. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to expel him until the end of the first semester of the 2000-2001 school year provided he attends an anger management program, but otherwise upholding the decision of a student disciplinary tribunal to expel him for one year with the opportunity of attending an alternative school. The tribunal found the Student guilty of saying that he was going to bring a gun to school and shoot the black people. The Student claims that there was no evidence to support the charges made against him. The Local Board's decision is reversed.

On April 18, 2000, some parents reported that the Student had been overheard saying that he was going to shoot some other students. The Student was charged with violating Rules 5 and 11 of the Local Board's Student Conduct Behavior Code. Rule 5 provides that:

A student shall not: a) Make oral or written threatening, harassing, or intimidating remarks or symbolic gestures toward any student which threatens the safety or well being of that student or has the likelihood of provoking a fight. This includes, but is not limited to bullying, disrespectful conduct, insult, use of profanity, or ethnic, racial, sexual, or religious slurs or harassment. — A1. Oral threat/intimidation (fear of bodily harm).

Gwinnett County Board of Education Policy JCD, Student Conduct Behavior Code, p. 5 (Jan. 13, 2000).

Rule 11 prohibits conduct that is subversive to good order and provides:

A student shall not perform any other act which [sic] 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 or federal law, involvement in gang/hate related behavior, providing false information to school personnel, possession or use of paging devices (beepers), laser pointers, 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. – C. Hate or hate group-related activity or behavior.

Gwinnett County Board of Education Policy JCD, Student Conduct Behavior Code, p. 11 (Jan. 13, 2000).

Evidence presented at the tribunal hearing established that in January or February 2000 the Student, an eighth grader, and two of his friends were walking in the hallway behind a group of African-American students who were walking slowly. The Student jokingly said to his friends that he wanted to bring a gun to school and shoot all of the black students. A female student overheard the comment. At some later time, the female student again overheard the group joking with one another about bringing a gun to school to shoot black and Hispanic students. Six weeks later, the conversations were reported to the school administration. The Student admitted that he made the comments, but testified that they were made privately and as a joke.

The tribunal found the Student guilty of making intimidating threats and conduct subversive to good order and expelled him for one year with the option of attending an alternative school. Upon appeal, the Local Board upheld the tribunal's decision, but decided that the Student could return to school after the first semester of the 2000-2001 school year if he attended an anger management class. The Student then appealed to the State Board of Education.

On appeal to the State Board of Education, the Student claims that the evidence presented did not support the charges. Additionally, he claims that the punishment was too harsh.

The Local Board's Rule 5 has three elements. It requires (1) an oral or written remark (2) directed toward another student (3) that threatens the safety of that student or (3a) has the likelihood of provoking a fight. There was no evidence that the Student directed his statements to the students he was talking about and the comments were not directed to the female student who overheard the conversation. Instead, he was engaged in a private conversation with his friends. There was no evidence of any likelihood of a fight starting – nothing had happened for two or three months before the parents reported the conversation to the school officials. Thus, even though the remarks were reprehensible, two of the three elements required by Rule 5 are missing, making Rule 5 inapplicable – the statements simply are not covered by Rule 5.

The Local Board argues that there was evidence to support the finding that the Student violated Rule 5 because the Student admitted at the hearing that he had violated Rule 5. The Student, however, argues that he did not understand what was required under each of the Rules. The exchange during the hearing was:

[PROSECUTOR]: 5-A has to do with making threats, in this particular case an oral threat to bring a gun to school to shoot people; and because by your own acknowledgement you did make that statement, we charged you with a Rule 5-A1.

[HEARING OFFICER]: ...[D]o you understand why you were charged with Rule 5-A1?

[STUDENT]: Yes, sir.

[HEARING OFFICER]: Do you admit or deny violating Rule 5-A1?

[STUDENT]: I admit.

Thus, the Student admitted he said what the prosecutor stated, but the prosecutor failed to properly state what Rule 5-A1 required. The prosecutor did not explain that Rule 5-A1 requires the remark to be directed to another student who would be threatened by the remark, or that the remark had the likelihood of provoking a fight. The Student's admission to an improperly stated rule cannot be deemed to establish that he violated the rule. The State Board of Education, therefore, concludes that although the speech cannot be condoned, the Local Board failed to prove that the Student violated its Rule 5.

The Local Board claims that the Student violated Rule 11 because he made a race related statement that was menacing in a public hallway and it was overheard by another student. Rule 11 prohibits "any other act which is subversive to good order and discipline in the schools." Although the Student's comments were overheard by a student to whom the remarks were not directed, there was no showing that the remarks were subversive to good order and discipline in the schools. Several weeks passed between the time the remarks were made and when they were reported to the school administration, but there was no evidence that good order and discipline in the school was ever affected or that there was any likelihood that there would be a breakdown in order and discipline in the school if the Student remained in school.

Although Rule 11 is necessarily broad, it is not directed to the control of offensive or disagreeable speech when the speech, although overheard, is essentially private and not meant to incite anyone to abandon good order and discipline in the school. The Local Board argues that Rule 11 applies because one student overheard the conversation and was frightened by what she heard.¹ There is, however, simply nothing in Rule 11 that would make it applicable because one student was frightened by what she overheard. The State Board of Education concludes that there was no evidence to support the charge that the Student violated Rule 11.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to carry the burden of proof to establish that the Student violated either its Rule 5 or its Rule 11. Accordingly, the Local Board's decision is REVERSED.

This _____ day of October 2000.

Bruce Jackson
Vice Chairman for Appeals

¹ The student actually testified that she was "nervous," "a little bit afraid," and "uncomfortable" by what she heard.