

STATE BOARD OF EDUCATION

STATE OF GEORGIA

P. R. M.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2001-23
	:	
BANKS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by P. R. M. (Student) from a decision by the Banks County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him through the end of the 2000-2001 school year after finding him guilty of assault. The Student claims the evidence does not support the charges and that the punishment was too severe. The Local Board’s decision is reversed.

The Local Board has a policy that bans assault, which it defines as “threats of bodily harm and/or sexual assault, of teachers, administrators, other school personnel, other students, or persons attending school-related functions.” Student Handbook, 2000-01, p. 18.

On August 25, 2000, the Student, a ninth grader, was in a science lab class, where he was talking with a friend. During the conversation, the Student said he was going to kill every one at his graduation. Three or four other students who were assigned to the same lab table overheard the conversation. The school administration became aware of the Student’s comments and charged him with assault.

The Student claims on appeal that there was no evidence that he assaulted anyone or otherwise violated the Local Board’s policy because his statement was not directed at any identifiable person, was about some futuristic event that might not occur, and was meant as a joke. He also argues that the Local Board’s policy is too broad because it can be applied to the shouts of, “Kill them!” at a ballgame.

The Local Board has the burden of establishing that the Student violated its policy. *Owens v. Burke Cnty. Bd. of Educ.*, Case No. 1978-6 (Ga. SBE, June 8, 1978). The Local Board claims that its policy does not require immediacy, an identifiable person, or an apprehension of fear. We disagree with the Local Board’s argument. Although the Local Board argues that it does not have to follow the requirements of the criminal code, inherent in the concept of assault is the direction of a threat at someone who perceives an immediate danger. For example, the definition of simple assault in

O.C.G.A. § 16-5-20 requires an overt action and the reasonable apprehension by someone of immediately receiving a violent injury.

Before a student is charged with violating a policy, the student has to be aware that his or her actions will constitute a violation of the policy. *See, e.g., Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993). Thus, if the ordinary understanding of assault requires that a threat be directed at someone, a student would be unaware that a conversation with a friend would be interpreted as an assault.

School systems throughout the country have been rightly concerned about student safety because of the number of shootings that have occurred in the schools. While it is necessary to take any shooting threat seriously, a school system cannot arbitrarily disregard the due process rights of its students because of a climate of fear.

In the instant case, there was no evidence that the Student took any action or that there was a reasonable apprehension by someone of immediately receiving a violent injury. The Student's comment concerned action to be taken more than two years in the future, which means that several events would have to occur before the statement could possibly constitute a present threat – the Student would have to graduate, the listener would also have to graduate from the same school, the Student would have to be in a position to carry out the threat, and the Student would have to remain immature in his thoughts. The statement, therefore, could not constitute a present threat or assault. Although the Student's comment is a cause for concern, the State Board of Education concludes that the Student's remark did not constitute an assault and could not, therefore, constitute a violation of the Local Board's policy.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to present any evidence that the Student committed an assault against anyone. Accordingly, the Local Board's decision is REVERSED.

This _____ day of April 2001.

Bruce Jackson
Vice Chairman for Appeals