

STATE BOARD OF EDUCATION

STATE OF GEORGIA

K. G.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-26
	:	
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by K. G. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a disciplinary tribunal to expel her from regular school until the beginning of the 2004-2005 school year, with the option of attending an alternative school beginning with the spring semester of the 2003-2004 school year after finding her guilty of making terroristic threats and using profane or insulting language. The Student claims there was no evidence to support the charges, and that the policy regarding profane and insulting language is unconstitutional. The Local Board's decision is sustained.

The Student is a seventh grader. On October 8, 2003, a counselor in the Student's middle school retrieved a notebook from an eighth grade student. The cover of the notebook had crosses and swastikas drawn on it. Inside the notebook was a list with the heading "Hit List" that contained the names of some teachers, the police, and some ethnic groups. The notebook also had a page that was titled "Evil Ideas." The Student was interviewed and gave a statement in which she said, "I did this because I didn't want to hurt myself or other people. The 'Hit List' was never going to be acted out. The poems were just a way to get out feelings...."

The Student was charged with making terroristic threats and using profane language, which includes language that is insulting to another person. A hearing was held on October 13, 2003 before a tribunal hearing officer.

The burden of proof was on the school system to show that the Student violated one of its policies. *J. G. v. Columbia Cnty. Bd. of Educ.*, Case No. 1996-40 (Ga. SBE, Sep. 12, 1996). The Local Board's policy provides that "a terroristic threat occurs when one threatens, whether spoken, written or transmitted via any electronic communication system, to commit an act of violence." The Local Board defined the use of profane language as:

"using profane, vulgar, obscene, or insulting language, whether spoken, written, gestured, or transmitted or received via any electronic communication device. Such use includes, but is not limited to, insulting racial, ethnic, or religious comments or actions, possession or distribution of

profane, vulgar, obscene, insulting, or threatening materials, and access, upload, download, or distribution of vulgar, obscene, insulting, or threatening graphics.”

The Local Board’s policy on terroristic threats has three elements: (1) the making of a threat, (2) orally or in writing, and (3) communication of the threat. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The Student admitted in writing that she wrote the contents in the notebook. The notebook contains a “Hit List,” which names several teachers, and contains statements that indicate acts of violence such as “kill all clowns,” “kill everyone by voodoo,” “kill old people,” and “go to Jewish Bar Mitzvah and go on a killing rampage.” The notebook was found in the possession of another student, which means that it was communicated to another person. There was, therefore, evidence before the Local Board that satisfied each of the elements for finding that the Student made terroristic threats.

The Local Board also charged the Student with using profanity. This charge was based on a page in the notebook headed “Evil Ideas,” which listed several acts, including (1) “get a monkey and train it to butt rape,” (2) “sacrifice Jesus,” (3) “kill all clowns,” (4) “kill everyone by voodoo,” (5) “go to Jewish Bar Mitzvah and go on a killing rampage,” (6) “kill old people,” (7) “kill all Jews, Christians, etc.,” and (8) “stab someone’s eyeballs out with a needle.” These statements are certainly obscene and insulting to Jews, Christians, and old people. There was, therefore, evidence to support the Local Board’s finding that the Student violated its prohibition against using profane, vulgar, obscene, or insulting language.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision. Accordingly, the Local Board’s decision is
SUSTAINED.

This _____ day of May 2004.

William Bradley Bryant
Vice Chairman for Appeals

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The Student is a seventh grader. On October 8, 2003, a counselor in the Student's middle school retrieved a notebook from an eighth grade student. The cover of the notebook had crosses and swastikas drawn on it. Inside the notebook was a list with the heading "Hit List" that contained the names of some teachers, the police, and some ethnic groups. The notebook also had a page that was titled "Evil Ideas."¹ The Student was interviewed and gave a statement in which she said, "I did this because I didn't want to hurt myself or other people. The 'Hit List' was never going to be acted out. The poems were just a way to get out feelings...."

The Student was charged with making terroristic threats and using profane language, which includes language that is insulting to another person. A hearing was held on October 13, 2003 before a tribunal hearing officer.

The only witnesses put on by the school system were the counselor, who testified that she picked up the notebook, and an assistant principal who conducted the investigation. Except for his description of the notebook, the assistant principal's testimony consisted only of hearsay, which was objected to by the Student. There was no evidence introduced that the notebook belonged to the Student, or that the Student wrote anything in the notebook. The notebook was not introduced into evidence so the record

¹ The notebook was not included in the record; the description of the notebook is from the testimony of the assistant principal.

only contains the assistant principal's description of the notebook and what was included in it.

The burden of proof was on the school system to show that the Student violated one of its policies. *J. G. v. Columbia Cnty. Bd. of Educ.*, Case No. 1996-40 (Ga. SBE, Sep. 12, 1996). According to the charge letter, "a terroristic threat occurs when one threatens, whether spoken, written or transmitted via any electronic communication system, to commit an act of violence." The use of profane language is defined as

"using profane, vulgar, obscene, or insulting language, whether spoken, written, gestured, or transmitted or received via any electronic communication device. Such use includes, but is not limited to, insulting racial, ethnic, or religious comments or actions, possession or distribution of profane, vulgar, obscene, insulting, or threatening materials, and access, upload, download, or distribution of vulgar, obscene, insulting, or threatening graphics."

Under the Local Board's policy, the making of a terroristic threat requires the making of a threat, the communication of the threat, and the threat must be a threat to do violence. In this case, there was no evidence that the Student made a threat, or that she communicated a threat, or that she planned on doing anything violent.

The Local Board did not produce any evidence to establish that the existence of a list constitutes the making of a threat to commit an act of violence. The Local Board, without citing any authority, contends that the mere existence of a list designated as a hit list constitutes the making of a terroristic threat. A threat, however, is defined as "[a] communicated intent to inflict physical or other harm on any person ..." Black's Law Dictionary, 1480 (6th ed. 1990). There must, therefore, be a communication to someone else. The Local Board did not present any evidence to establish that the Student communicated anything to anyone else. In addition, there was never any showing of any intent on the Student's part to inflict physical or other harm to another person. Thus, in the absence of any evidence of intent to do harm, or that anyone on the list received a copy of it, the school system failed to carry its burden of proof to establish that the Student made a terroristic threat.

The Local Board contends the threats were communicated because they were in the possession of another student when they were recovered. The evidence that the notebook was in the hands of another student does not establish communication. There was no evidence that the other student looked at the list, or was even aware of what was contained in the notebook. It cannot, therefore, be said that the Student communicated anything to the other student.

The Local Board argues that hearsay evidence is admissible in administrative hearings and the tribunal could rely on the hearsay evidence in reaching a decision that the Student engaged in making terroristic threats. The Local Board's argument, however, confuses the issues of admissibility and probity. Even in the absence of an objection, hearsay evidence does not have any value in establishing any fact. *See, McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 448 S.E.2d 249 (1994). Thus, even though the

admission of hearsay evidence will not result in the reversal of a decision, hearsay evidence cannot be the basis for establishing any fact. At most, it can only buttress properly admitted direct evidence.

In the absence of any evidence that she made any threats, the State Board of Education can only conclude that the Local Board failed to carry its burden of proof to establish the Student's guilt that she made a terroristic threat.

The Local Board also charged the Student with using profanity. This charge was based on a page in the notebook headed "Evil Ideas," which listed several acts, including (1) "get a monkey and train it to butt rape," (2) "sacrifice Jesus," (3) "kill all clowns," (4) "kill everyone by voodoo," (5) "go to Jewish Bar Mitzvah and go on a killing rampage," (6) "kill old people," (7) "kill all Jews, Christians, etc.," and (8) "stab someone's eyeballs out with a needle."² While this list might be considered a list of evil ideas, the school system failed to produce any evidence to show that the list contains any profane, vulgar, obscene, or insulting language. In addition, the school system failed to produce any evidence that the Student wrote any of the items contained in the list, or, if she did write any of the items, that she communicated the statements to anyone. The school system also failed to show that there was anyone who was offended by the statements or found the statements insulting. There was, therefore, no showing that the Student was guilty of using profanity.

In this case, the school system attempted to make its case based almost solely on the testimony of the assistant principal who conducted an investigation. It did not call any other students and the Student was not questioned. Thus, except for the observations made by the assistant principal, the entire case presented by the school system relied upon hearsay evidence. As noted above, however, hearsay evidence cannot be used to establish any fact, even in an administrative hearing. The State Board of Education recognizes that school systems have to be wary of actual threats made by students, but wariness does not remove the necessity of proving that a student actually made a threat.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to prove that the Student was guilty of any of the offenses charged. Accordingly, the Local Board's decision is REVERSED.

This _____ day of May 2004.

William Bradley Bryant
Vice Chairman for Appeals

² As previously indicated, the notebook was not introduced into evidence. The listing of "Evil Ideas" comes from the testimony of the assistant principal.