

STATE BOARD OF EDUCATION

STATE OF GEORGIA

O. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-53
	:	
DOUGLAS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by O. W. (Student) from a decision by the Douglas County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the 2004-2005 school year, with the option of attending an alternative school during the expulsion period, after finding him guilty of making a terroristic threat. The Student claims that there was no evidence that he made a threat or was aware that the threat was going to be made. The appeal, however, was not timely filed and is, therefore, dismissed because the State Board of Education does not have jurisdiction to consider it.

On March 26, 2004, the Student loaned his cellular telephone to another student because the other student said he wanted to play a game on it at the beginning of class. The other student dialed 911 and said there was a bomb at the high school. The police notified school officials and the high school was evacuated. Immediately after making the telephone call, the other student returned the telephone and told the Student that he had called the police. The police traced the telephone call through the 911 system and dialed the cellular telephone number. The Student answered the cellular telephone when it rang and the police could hear others in the background shouting, "Hang up the telephone." The Student hung up the telephone without speaking to the police. When order was restored, the police took the Student out of his class and arrested him after determining that he possessed the telephone from which the threat had been made. By then, the Student had dismantled the telephone into three parts because he thought that dismantling the telephone would prevent any telephone calls from being traced back to it.

The Student was charged with making a terroristic threat. The Douglas County High School Discipline Code provides that

A student commits the offense of terroristic threat when he/she threatens to commit violence against person(s) or damage to property, which would cause a reasonable person to feel terrorized or causes the evacuation of a

building, school assembly, school bus or otherwise causes serious disruption of a school or school activity.

High School Discipline Code, p. 11.

A hearing on the charge was held before a student disciplinary panel on April 16, 2004. The Student testified that he did not know that a bomb threat had been made until after the high school was evacuated. The student who made the call testified that he decided to call in the bomb threat after he had been playing the game on the telephone for a few minutes, and that he did not tell the Student that he had made a bomb threat. Despite the lack of any evidence that the Student "threaten[ed] to commit violence against persons or damage to property," the tribunal found him guilty of making a terroristic threat and expelled him for the remainder of the 2003-2004 school year and for the entire 2004-2005 school year with the option of attending an alternative school during his period of expulsion.

The Student appealed the tribunal's decision to the Local Board, but the Local Board upheld the tribunal's decision on May 4, 2004. The Student then orally requested the Local Board to reconsider its decision because all charges against him had been dismissed by the juvenile court. On June 8, 2004, the Local Board again upheld the tribunal's decision and informed the Student that he could appeal the decision within 30 days to the State Board of Education. On June 14, 2004, the Student filed his appeal to the State Board of Education.

The Student claims that there was no evidence to support the tribunal's decision. The Local Board claims that there was evidence to support the tribunal's decision. In addition, the Local Board claims that the Student's appeal is untimely because it was not filed within 30 days after the initial decision, i.e., within 30 days after May 4, 2004. We will first address the issue of whether the appeal was timely filed. If it was not timely filed, then the appeal will have to be dismissed because the State Board of Education lacks jurisdiction to consider it.

O.C.G.A. § 20-2-1160 requires an appeal to the State Board of Education to be filed within 30 days after the local board of education makes its decision. O.C.G.A. § 20-2-1160(b). In the instant case, the Student filed the appeal within 30 days after the Local Board denied his request for reconsideration but more than 30 days after the Local Board made its initial decision. This raises the question, "Does the filing of a request for reconsideration with a local board of education toll the statutory period for filing an appeal to the State Board of Education?" In *Murdock v. Perkins*, 219 Ga. 756, 135 S.E.2d 869 (1964), the Georgia Supreme Court considered the question of whether the State Board of Education had the authority to reconsider its decisions and decided that such authority did not exist in the absence of a specific provision for reconsideration. Similarly, O.C.G.A. § 20-2-1160 does not provide for the tolling of the appeal period if a motion for reconsideration is filed with a local board of education. Since the appeal period is not tolled, it follows that the Student failed to file his appeal on time and the State Board of Education, therefore, lacks jurisdiction to consider his appeal.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student's appeal was filed late and his appeal, therefore, is hereby DISMISSED.

This _____ day of September 2004.

William Bradley Bryant
Vice Chairman for Appeals