

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| N. G., | : | |
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| Appellant, | : | |
| | : | |
| vs. | : | CASE NO. 2005-06 |
| | : | |
| HARRIS COUNTY | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | DECISION |

This is an appeal by N. G. (Student) from a decision by the Harris County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend her until the end of the 2003-2004 school year and place her on probation during the first semester of the 2004-2005 school year after finding her guilty of disrupting the school by threatening another student. The Student claims that the tribunal erred by making inconsistent findings and that the evidence did not support the charges. The Local Board’s decision is sustained.

On March 22, 2004, while changing classes, the Student threatened to kill another student and said to still another student, “I will get you back for this.” The school administration charged the Student with making a terroristic threat and with disruptive conduct. A student disciplinary tribunal found the Student not guilty of making a terroristic threat, but found her guilty of disruptive conduct. The tribunal suspended the Student from school until the end of the 2003-2004 school year and placed her on probation until the end of the first semester of the 2004-2005 school year. The Local Board upheld the tribunal’s decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

On appeal, the Student argues that by finding her not guilty of making a terroristic threat, the tribunal could not find her guilty of disruptive conduct because the disruption charge was dependent on the terroristic threat charge. In addition, the Student claims that the evidence was inconsistent and did not support the charge of disruptive conduct.

The Student’s argument that the tribunal could not find her guilty of disruptive conduct is based on the incorrect premise that there exists some dependency by the disruption charge on the terroristic threat charge. Instead, the two charges are entirely independent. The behavior that results in disruptive conduct does not have to also be behavior that would constitute the making of a terroristic threat. The elements necessary for establishing the existence of a terroristic threat are not the same as the elements necessary for establishing that there has been disruptive conduct.

The Local Board's policy JCDA-1 10.03 – disruptive conduct, provides:

No student shall conduct himself or behave in any manner which is disruptive to the orderly educational process in a classroom or other instructional setting.

Harris County Board of Education – Code of Conduct Policy JCDA-1, Rule 10.03.

The Local Board's policy JCDA-1 7.01 – terroristic threat, provides:

A student commits the offense of a terroristic threat when he threatens to commit any crime of violence or to burn or damage property with the purpose of terrorizing another or of causing the evacuation of a school building or facility or school bus or otherwise causing serious educational inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.

Harris County Board of Education – Code of Conduct Policy JCDA-1, Rule 7.01.

Disruptive conduct thus requires a showing that a student's actions (1) adversely affect the educational process (2) in the classroom or other instructional setting. To establish that a terroristic threat has been made, the school system has to show that (1) there was a threat (2) to commit a crime of violence (3) for the purpose of terrorizing another. There is no overlap or dependency among the elements necessary to establish the two infractions. Thus, the tribunal could find that the Student's comments were disruptive to the educational process, but were not made for the purpose of terrorizing another.

"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). In the instant case, there was evidence that the Student threatened another student and caused students to become fearful of attending school, which adversely affected the educational process. There was, therefore, evidence to support the finding that the Student engaged in disruptive conduct.

The Student argues that since the incident occurred in the hallway, it did not affect the educational process and did not occur in an instructional setting. The effects of the Student's conduct, however, affected the educational process by causing students to become fearful of attending school. The fact that the incident occurred in the hallway does not take it out of the instructional setting – the entire school building is an instructional setting.

Finally, the Student argues that the evidence did not support the charge because there was inconsistent testimony. "The tribunal sits as the trier of fact and, if there is

conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). As previously stated, there was evidence to support the tribunal's decision.

In addition to the merits supporting the Local Board's decision, the Student has already completed her suspension period and is back in regular school. Her appeal, therefore, is moot since the State Board of Education cannot provide her with any relief.

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 and that the tribunal did not make any inconsistent findings. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2004.

William Bradley Bryant
Vice Chairman for Appeals