

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>R. B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2006-35</b>
	:	
<b>MUSCOGEE COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by R. B. (Student) from a decision by the Muscogee County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him permanently after finding him guilty of engaging in gang activities and creating a school disturbance. The Student claims that there was no evidence to support the Local Board’s decision. The Local Board’s decision is reversed in part and upheld in part. This matter is remanded to the Local Board for appropriate action in light of this decision.

On September 9, 2005, a disturbance in the cafeteria was reported to the administrators of Spencer High School. The Student, who was new in the school, was surrounded by several students who accused him of wanting to fight. The Student denied the accusations and tried to walk away, but the group surrounded him. At that time, an administrator arrived and took the Student to a classroom for questioning. While he was being questioned, a red “flag” fell from the leg of his pants.

Previously, the principal discovered that the Student was wearing a red flag under his shirt and he had admitted that he was a member of the “Bloods Nation” gang. The Student was suspended and given a warning.

The Student was charged with 1) disruption and interference with school, 2) verbal assault, physical assault, disrespectful conduct of students, 3) acts of misconduct, and 4) gang activity. The charges were conditioned on the claim that the Student threatened to shoot another student. The charge letter, however, did not identify who the Student allegedly threatened, or provide any other particulars concerning the charges.

A student disciplinary tribunal was convened to hear the charges. The only witnesses for the school system were an assistant principal and a disciplinary coordinator. The Student was the only other witness. Although he was not charged with possession of a weapon, the school witnesses gave testimony that there were allegations that the Student had a gun at school. There was, however, no evidence presented that the Student

had a gun at school. The tribunal found the Student guilty of the charges and expelled him from school permanently. The Local Board upheld the tribunal's decision when the Student appealed and the Student then filed an appeal to the State Board of Education.

The Student claims that there was no evidence to support the Local Board's decision. "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 its charge letter to the Student, the school system claimed that the Student threatened to shoot another student and that if the incident occurred, then he was guilty of violating "Rule 1, Disruption and Interference with School; Rule 5, Verbal Assault, Physical Assault, Disrespectful Conduct of Student; Rule 12, Acts of Misconduct; and Rule 14, Gangs." Charge letter to Student from Muscogee County School District, dated September 13, 2005.<sup>1</sup> The school system, however, did not present any evidence that the Student made a threat against another student. In the absence of any evidence of a threat, the basis for the charges, in the words of the charge letter, fails and, consequently, the charges stemming from the threat fail.

Even if the charges are individually considered rather than being based on the allegation that the Student threatened someone, there was no evidence that the Student disrupted the school, assaulted anyone, or engaged in any misconduct. There was no evidence that the Student was responsible for the incident in the cafeteria where he was surrounded by a group of students. The only evidence presented was that he attempted to remove himself from the situation but was stopped by the group. The school system also did not present any evidence that the Student physically or verbally assaulted anyone or showed any disrespect to anyone. There was no evidence of any fisticuffs, loud or threatening language, posturing for fight, or profanity. The school witnesses testified that there were two school-wide lockdowns during the day, but there was no evidence that the Student was responsible for these actions.

The Local Board argues that the Student's acts, taken together, affected the health and safety of other students, thus violating the Local Board's Rule 12. Again, the Local Board failed to show what acts of the Student affected the health and safety of other students. Additionally, the Local Board's Rule 12 provides only for suspension rather than expulsion.

The Student was also charged with gang activity. The Local Board's Policy JCDA provides, in part, that:

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<sup>1</sup> The Student was not charged with possession of a weapon, notwithstanding the claim by counsel for the Local Board that he was charged with possession of a weapon.

1. Membership in or affirmation with gangs as defined above shall not be permitted....

2. Wearing of any insignia, and/or uniforms, or other means of any gang identification, or using or making any signs, signals, or other means of gang communication or identification by any student or nonstudent visiting on the premises of any school facility shall not be permitted.

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Any student who violates this policy or any subpart thereof shall be subject to discipline under the Muscogee County School District Behavior Code and Discipline Policy, including the sanction of expulsion, if warranted under the particular circumstances of a violation.

Muscogee County Board Policy JCDA.

There was evidence that the Student admitted that he was affiliated with a gang and that he had previously been found by school officials to have been in possession of a red flag, a method of gang identification forbidden by the gang activity policy. This earlier conduct had been the subject of a school disciplinary matter involving the student and his father. With respect to the incident of September 9, 2005, there is evidence that the student admitted that he also had a red flag on that day and that he had received the flag from another person inside the school on September 9. Based upon the record, there is evidence to support the decision of the Local Board with respect to the charge of gang activity.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision with respect to the charges of disruption and interference with school, verbal assault, physical assault, disrespectful conduct of students or acts of misconduct. However, there was evidence to support the charge of gang activity. The Local Board's decision is reversed in part and upheld in part. This matter is remanded to the Local Board for appropriate action in light of this decision.

This \_\_\_\_\_ day of April 2006.

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William Bradley Bryant  
Vice Chairman for Appeals

