

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| K. M., | : | |
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| Appellant, | : | |
| | : | |
| vs. | : | CASE NO. 2007-34 |
| | : | |
| COLUMBIA COUNTY | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | DECISION |

This is an appeal by K. M. (Student) from a decision by the Columbia County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him for the remainder of the 2006-2007 school year and assigning him to an alternative school for the first semester of the 2007-2008 school year after finding him guilty of making a terroristic threat by threatening to bomb his school.¹ The Student claims that he was discriminated against and denied his First Amendment rights of free speech. The decision of the Local Board is sustained.

On November 7, 2006, the words, “I going to bomb the school”, were found on the wall of the boys’ bathroom. The school was evacuated until the police determined it was safe to return to the building. The next day, the Student went to the principal’s office and admitted that he had written the words. The Student was charged with making a terroristic threat.

Previously, a similar incident occurred at the school and school officials determined that they were unwilling to tolerate such actions. Students were informed that any future threats would result in expulsion.

At the end of the student disciplinary tribunal hearing, the tribunal expelled the Student for the remainder of the 2006-2007 school year and assigned him to an alternative school during the first semester of the 2007-2008 school year. The Local Board upheld the tribunal decision when the Student appealed. The Student then filed an appeal to the State Board of Education.

On appeal, the Student claims that his expulsion is discriminatory because the student who made a previous threat was not expelled. The Student claims that the discrimination was because of his race and thus violates Title VI of the Civil Rights Act

¹ During oral argument, the parties advised that the Student was placed in an alternative school for the remainder of the 2006-2007 school year by order of a juvenile judge.

of 1964. There was, however, no evidence in the record concerning the facts of the previous incident upon which to make a determination that the students were similarly situated. Additionally, the first incident precipitated a change in the disciplinary action the school system was going to seek. The Student, therefore, was not acting under the same set of rules as the previous student. "An equal protection claim arises when an individual contends that he is receiving different treatment from that received by other individuals similarly situated; the essence of the claim is that certain action is taken against the plaintiff because of his membership in a particular class and that given the circumstances of the case or the nature of the clients, such action is arbitrary and illegal; the clause is not necessarily violated only upon a showing that similar action was taken against the entire class." *Spencer et al. v. McCarley Moving & Storage Company, Inc.*, 174 Ga. app. 525, 528, 330 S.E.2d 753, 758 (1985). Here, the Student has not shown that he was similarly situated, that he was expelled because of his race, or that his expulsion was arbitrary or illegal. The State Board of Education concludes that there was no evidence that the Student's expulsion was based upon discrimination.

The Student also claims that he is being punished for exercising his free speech rights and he cites the case of *Ponce v. Socorro Indep. Sch. Dist.*, 432 F.Supp.2d 682 (W. D. Tex. 2006), in support of his argument. In *Ponce*, a tenth-grade student was expelled for making a terroristic threat because he had written in a diary about creating a "pseudo-Nazi" group and carrying out an attack against his high school during his senior year. The court held that the student had a valid first amendment claim because his expulsion was not based upon any facts showing that there was a reasonable belief that the diary would cause disruption of the school. *Ponce*, 432 F. Supp.2d at 695.

In the instant case, there was actual disruption of the school because the school was evacuated when the words were found on the bathroom wall. The police came to the school and conducted a search for a bomb. The Student's expulsion was not based upon any belief that the words would cause disruption, but upon the fact that there was a disruption of the school. Thus, while *Ponce* is instructive, the facts are distinguishable and the basis for the *Ponce* decision does not exist in the instant case, i.e., the decision to expel the Student was not based on speculation. The State Board of Education, therefore, concludes that the Local Board did not violate the Student's first amendment rights.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student any of his constitutional rights. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of May 2007.

William Bradley Bryant
Vice Chairman for Appeals

Summary

This is an appeal by K. M. (Student) from a decision by the Columbia County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him for the remainder of the 2006-2007 school year and assigning him to an alternative school for the first semester of the 2007-2008 school year after finding him guilty of making a terroristic threat by threatening to bomb his school. The Student claims that he was discriminated against and denied his First Amendment rights of free speech. The decision of the Local Board is sustained.