

STATE BOARD OF EDUCATION

STATE OF GEORGIA

D. C.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2008-10
	:	
DOUGLAS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by D. C. (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 for the remainder of the 2006-2007 school year and for all of the 2007-2008 school year, with the option of attending an alternative school during his expulsion period, after finding him guilty of gang-related activity, bullying, assault and battery, and minor physical contact. The Student claims there was no evidence that he was engaged in gang activity or was fighting. The Local Board's decision is reversed.

On May 1, 2007, the Student approached another student in the hallway, placed his hands on the other student's shoulder, and asked the other student whether the student had taken his cellular telephone.¹ On May 2, 2007, school officials became aware that there was a picture posted on the internet of the Student making a sign with his hands that the school officials contended was a gang sign.² The Student was charged with engaging in gang-related activity, assault and battery, and making minor physical contact.³ The Student was suspended for ten days and a student disciplinary tribunal was appointed.

The Student denied he was involved with a gang. During the hearing before the student disciplinary tribunal, the Student denied any participation in any gang. The school system had the school resource officer testify that a picture of the Student that was printed from the Internet showed the Student making a sign that was related to the Big Money Gang. There was no other evidence that the Student was a member of a gang or had participated in any gang activities.

¹ The incident was on videotape, but the videotape was not included as part of the record.

² A copy of the picture was not included in the record.

³ The charges of assault/battery, bullying, and minor physical contact are level 2 offenses, which carry only a 10-day suspension penalty.

The Local Board's rule provides:

[A] gang is defined as three or more individuals who have a name, claim a territory, use graffiti to mark a schools territory, or themselves, have rivals/enemies, or interact together at the exclusion of other people. The existence of such gang affiliation may be established by evidence of a common name or common identifying signs, symbols, tattoos, graffiti, attire, or other distinguishing characters.⁴

A local board of education has the burden of proof when it charges a student with an infraction of its rules. *Scott G. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1988-26 (Ga. SBE, Sep. 12, 1988). In the instant case, there was no evidence that the Student was associated with two or more other individuals, had any gang affiliation, or had any knowledge that the sign he made with his hands was a gang-related sign. The only evidence was reference to a picture of the Student, which was not included in the record, that was taken off the internet and which the resource officer identified as a gang symbol. There was no evidence of the circumstances or context of the picture of the Student. The resource officer, although ostensibly familiar with the gangs in the school, did not identify the Student as a member of a gang. The Student testified that he was displaying a sign he had seen on television, which does not establish that he was a member of a gang. The State Board of Education concludes that the Local Board failed to carry its burden of proof to establish that the Student engaged in any gang-related activity.

The tribunal also found the Student guilty of assault and battery, bullying, and minor physical contact. Each of these charges, however, only carry a 10-day suspension penalty under the Local Board's policies. The Student was expelled for one year only because of the gang activity charge. It is problematic whether the tribunal would have found the Student guilty of these latter charges had it not first heard the gang activity charge. As observed by one federal circuit court, "Gangs generally arouse negative connotations and often invoke images of criminal activity and deviant behavior. There is therefore always the possibility that a jury will attach a propensity for committing crimes to defendants who are affiliated with gangs or that a jury's negative feelings toward gangs will influence its verdict. Guilt by association is a genuine concern whenever gang evidence is admitted." *United States v. Irvin*, 87 F.3d 860, 865 (7th Cir., 1996). In any event, the Student has already served a suspension period longer than provided for by the Local Board's policies and he should, therefore, be returned to school.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not carry its burden of proving that the Student was a member of a gang and a one-year expulsion period exceeds the Local Board's policy regarding

⁴ The Student did not raise any issue concerning the constitutionality of the over breadth of the Local Board's proof requirement of gang affiliation.

bullying, minor battery and minor physical contact. The Local Board's decision, therefore, is REVERSED.

This _____ day of December 2007.

William Bradley Bryant
Vice Chairman for Appeals