

STATE BOARD OF EDUCATION

STATE OF GEORGIA

S. F.,

Appellant,

vs.

CASE NO. 2000-43

**GWINNETT COUNTY
BOARD OF EDUCATION,**

DECISION

Appellee.

This is an appeal by S. F. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until January 2001 after finding him guilty of making threats and assaulting a school employee, making threats and assaulting another student, and other conduct subversive to good order because he posted some information on the Internet. The Student claims that the Local Board's decision was too harsh and there was no evidence to support the decision. The Local Board's decision is reversed.

Late in the evening of March 21, 2000, the Student, a seventh grader, sat at home in front of his computer typing messages to another student, S. A., with a computer program made available by the Internet service provider they were both using. S. A. was part of a group of students who engaged in saying that the Student was homosexual. The Student initially did not disclose his name, but finally gave S. A. his name. She immediately accessed the Student's profile stored by the Internet service provider. S. A. found a list of names of some teachers that was identified as a "hit list." S. A. wrote to the Student that he was going to get into trouble. She then wrote that he was "queer" and signed off. The Student then went to a web site operated by two other students, who were friends of S. A. and part of the group that had been calling him names, and left a message that S. A. was a "fat bitch." He also wrote that she would be on television program and engage in a dialogue that included words about sucking on a 45. One of the students who operated the web page reported the next day to the school officials that the Student had a hit list and had made a derogatory posting about S. A.

On March 24, 2000, the principal suspended the Student and charged him with violating Rule 4, abuse, threats, intimidation, assault or battery on a school employee, Rule 5, abuse, threats, intimidation, assault or battery by a student on another student or to any other person not employed by the school, Rule 11, other conduct which is subversive to good order, and with violating state and federal law.

A hearing was held before a student disciplinary tribunal on April 11, 2000. During the hearing, the school system presented only hearsay evidence in the form of statements taken from

S. A. and the two students who operated the web site. The Student testified on his own behalf and related the information set forth above. The tribunal found him guilty of all charges and expelled him until January 3, 2001. When the Student appealed to the Local Board, the Local Board upheld the tribunal's decision except for the finding that the Student violated Rule 11. The Student then appealed to the State Board of Education.

On appeal, the Student claims that the evidence failed to support the charges. We agree. The Student was charged with violating Rule 4 – abuse, threats, intimidation, assault or battery on a school employee, which provides that a student shall not “make oral or written contact or symbolic gesture or contact of a threatening or provoking nature to a school employee or in the presence of a school employee. This includes, but is not limited to disrespectful conduct, insult, use of profanity, ethnic, racial, sexual, religious slur, or harassment.” There was no evidence that the Student made an oral or written gesture or contact of a threatening or provoking nature to a school employee. There was no evidence that any school employee even saw any of the Internet postings. There was, therefore, no evidence that the Student violated Rule 4.

Rule 5 – abuse, threats, intimidation, assault or battery by a student on another student or to any other person not employed by the school, provides that a student shall not “make oral or written threatening, harassing, or intimidating remarks or symbolic gestures toward any student which threatens the safety or well being of that student or has the likelihood of provoking a fight. This includes, but is not limited to bullying, disrespectful conduct, insult, use of profanity, or ethnic, racial, sexual, or religious slurs or harassment.” Again, there was no evidence that the Student made an oral or written threatening, harassing, or intimidating remark to any student. The Local Board claims that the Student posted disrespectful language about S. A., but there was no evidence that S. A. ever saw the posting. There was no evidence that the posting was directed toward S. A. Additionally, there was no evidence that any student saw the “hit list.”¹ There was, therefore, no evidence that the Student violated Rule 5.

The final charge against the Student was that he violated state and federal law. The Local Board failed to present any evidence of any state or federal law that the Student violated, nor did the Local Board cite any state or federal law that the Student violated or might have violated.

The Student also claims that the Local Board does not have jurisdiction over his actions, which took place in his home after school. We agree. The Local Board is attempting to control the Student's speech made while he is in his own home. After a student arrives home and comes under the control of his or her parents, the school's authority ceases to exist.

The Local Board argues that the student disciplinary rules are applicable to “to behavior that has an effect on the order and discipline in the schools regardless of where the misconduct occurs.” Local Board Brief, p. 8. The Local Board's argument is that it can grant jurisdiction to itself when such jurisdiction does not and cannot exist. The Local Board, however, cannot exercise jurisdiction unless it has been specifically authorized by the Georgia Constitution or the

¹ To access the “hit list,” a viewer would have to consciously type in the Student's screen name, then ask to see the Student's profile, and then read the profile. The Local Board has never explained how the mere existence of a list constitutes assault.

legislature. The Georgia Constitution grants local boards the authority to maintain and control the schools within their jurisdiction, but maintaining and controlling the school does not mean control over the students after they have arrived home and come under the control of their parents.

The Local Board also argues that O.C.G.A. § 20-2-753(a)(2), which provides for the appointment of a disciplinary tribunal in cases involving any “alleged assault or battery by a student upon another student...,” grants it jurisdiction because the Student committed an assault. As previously discussed, however, the Local Board failed to present any evidence that the Student assaulted any other student. O.C.G.A. § 20-2-753, therefore, does not grant the Local Board jurisdiction over the Student.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board lacked jurisdiction to impose any discipline on the Student, and there was no evidence to support any of the charges made by the school system. The Local Board’s decision, therefore, is hereby
REVERSED.

This _____ day of September 2000.

Bruce Jackson
Vice Chairman for Appeals