

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>T. B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-21</b>
	:	
<b>HENRY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by T. B. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him for ten days after finding him guilty of sexual misconduct and using vulgar and profane language. The Student claims there was no evidence to support the charges. The appeal is dismissed as moot since the suspension period has passed and the State Board of Education cannot provide the Student with any relief.

On October 25, 2004, a female student reported that the Student had been sexually harassing her in their computer class by asking her to engage in fellatio with him. The female student also reported that he asked her to look at his penis while they were in class. During his investigation of the incident, an assistant principal learned that the Student continually made comments to another female student about her large breasts. The assistant principal charged the Student with sexual misconduct and with using profane, vulgar, obscene or insulting language.

During the hearing before a student disciplinary tribunal, the two female students testified about the comments the Student made. The female student who the Student said had large breasts testified that she was not offended by the Student's comments because they were friends. The Student testified that he did not proposition the female student who filed the complaint and that anything she heard resulted from her overhearing a private conversation he had with another male student. He also claimed that his reference to the other female student's large breasts was in a private conversation with another male student. Based on the testimony presented, the tribunal found the Student guilty and suspended him from school for ten days, until November 19, 2005. The Local Board upheld the tribunal's decision and the Student filed an appeal with the State Board of Education.

On appeal, the Student claims there was no evidence to support the charges because the school system failed to present any corroborating testimony and the

testimony of the female student who made the charges was filled with inconsistencies so that her testimony was unbelievable.

"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 the testimony of the female student who made the charges. The fact that the Student's testimony contradicted the female student's testimony does not depreciate the value of her testimony as evidence. "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).

Based upon the foregoing, it is the opinion of the State Board of Education that the Student's appeal is moot since his suspension period is over and there is no relief that can be granted. Accordingly, the Student's appeal is DISMISSED.

This \_\_\_\_\_ day of April 2005.

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William Bradley Bryant  
Vice Chairman for Appeals