

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**STEPHANIE S.,** :  
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 :  
 **Appellant,** :  
 : **CASE NO. 1990-5**  
 v. :  
 : **DECISION**  
 :  
 **BULLOCH COUNTY** :  
 **BOARD OF EDUCATION,** :  
 :  
 :  
 **Appellee.** :

Stephanie S. (“Appellant”) has appealed from a Bulloch County Board of Education (“Local Board”) decision to suspend her for five days and prohibit her from engaging in extra-curricular activities for the remainder of the first semester of the 1989-1990 school year because the odor of alcohol was detected upon her breath during school hours. The appeal is dismissed because the issues are moot.

On November 17, 1989, several high school students met for breakfast before school hours. One of the students mixed some peach schnapps with orange juice in a water glass and several students, including Appellant, took a sip from the glass. The students then went to school.

During the third period, the third-period teacher smelled alcohol on the breath of Appellant and another student who had attended the breakfast. The teacher reported the situation to the assistant principal, but no disciplinary action was taken that day. On the following Monday, the third-period teacher asked the school principal whether the school was going to take any action against the two students. Appellant and the other student were then asked if they had consumed any alcohol prior to coming to school on the previous Friday. Both students admitted they had taken a sip from a glass containing orange juice and peach schnapps. The students also provided the names of the other students involved in the incident.

Charges were made against the two students and also against two other students. A hearing on the charges against all four students was held before the Local Board on November 27, 1989. The testimony showed that alcohol was smelled on the breath of only two students. The Local Board’s policy provides:

For his own safety and the safety of others, no student shall be allowed to remain on the school campus or at any school activity while under the influence of alcoholic beverages or other controlled substances as defined by Georgia law or while the odor of alcohol is about his breath. Drunkenness or drunken behavior at school or at school—sponsored activities, which shall include, but not be limited to, being present on the school campus or at a school activity with the odor of alcohol about one’s breath, is prohibited.

The Local Board found the two students who had alcohol on their breath guilty of violating the policy; the two other students were found innocent. Appellant was given an additional three days of in-school suspension, with the opportunity to make up any work she had missed during two days of suspension she served before the hearing, and was barred from participation in extra-curricular activities for the remainder of the semester. In addition, Appellant and her parents were directed to attend a substance abuse program within ninety days.

Appellant claims on appeal that she was denied due process and equal protection because the Local Board's policy is not rationally related to any legitimate interest or objective, and she was guilty of no greater offense than the two students who were found not guilty. Additionally, Appellant claims that the investigation was untimely and the record contradictory whether alcohol was smelled on her breathe.

The Local Board has moved to dismiss the appeal as moot. A supersedeas motion was not made, and Appellant has served her suspension and is eligible to participate in extra-curricular activities because the first semester has been completed. Finally, the ninety days in which Appellant and her parents were to attend a drug awareness seminar has also passed. The State Board of Education, therefore, cannot grant Appellant any relief. We believe the Local Board is correct.

The State Board of Education has limited jurisdiction. Essentially, it can only uphold or reverse the decision of a local board of education. In this case, a reversal of the Local Board's decision does not provide Appellant with any relief since the suspension period has passed; all of the issues are moot. The State Board of Education, therefore, concludes that the appeal should be dismissed.

Notwithstanding a dismissal, the Local Board's decision is valid against Appellant's claims. Appellant maintains that the fact that the assistant principal failed to take any disciplinary action when the alcohol was first detected establishes doubt that the odor of alcohol was detected. Appellant also argues that there was conflict in the testimony whether any teacher detected the odor of alcohol upon her breath. 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 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11. The third-period teacher testified that she smelled the odor of alcohol upon Appellant's breath. Appellant did not present any contradictory evidence. There was, therefore, evidence to support the Local Board's decision.

Appellant also claims she was denied equal protection because two other students were not punished even though they admittedly engaged in the same activity. The Local Board's policy, however, does not focus on the activity that took place before the beginning of school. Instead, the policy is directed to in-school activity, and, as pointed out by the Local Board, requires, at a minimum, some evidence of an odor of alcohol upon a student's breath. Fortunately, from the viewpoint of two of the students, the teachers did not detect alcohol upon

their breath. As pointed out by the Local Board, this could be an indication of the difference in the amount of alcohol consumed by the students. Nevertheless, without any evidence that two of the students had alcohol upon their breath, the Local Board was not in a position to impose any punishment, even though the two students admitted to participating in the same preschool activity.

Appellant also claims that the Local Board's policy is not rationally related to any legitimate interest of the Local Board. This issue was not raised at the hearing and no evidence was presented concerning the basis of the policy. In its relevant part, the policy excludes students from the campus who have the odor of alcohol upon their breath. The Local Board could have determined that other students would have an adverse reaction upon seeing a student in school with alcohol upon their breath, or it could have determined that alcohol upon the breath provides an active indication of potential disruptive activity without resort to subjective judgments about the amount of alcohol consumed and the student's capability. The Local Board could have raised other reasons if the issue had been raised at the hearing. The State Board of Education, therefore, concludes that the policy, on its face, does not appear to violate any due process or equal protection rights of students, and, as applied in the instant case, does not violate Appellant's equal protection rights.

Based upon the foregoing, the State Board of Education is of the opinion that the issues presented on appeal are moot. This appeal, therefore, is hereby

DISMISSED.

This 4 day of April, 1990.

Mr. Bobby Carrell was not present.

Larry A. Foster  
Vic Chairman For Appeals

