

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. S.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1999-3
vs.	:	
	:	DECISION
PEACH COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by J. S. (Student), an eleventh grader, from a decision by the Peach County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school and assigning him to an alternative school for the remainder of the 1997-1998 school year after finding him guilty of sexually touching a female student on a school bus. The Student claims that he was given improper notice of the hearing and that the decision was improperly based upon hearsay evidence. The Local Board's decision is sustained.

On December 2, 1997, a middle school female student registered a complaint that the Student, a tenth grader, had touched her breasts and placed his hand between her thighs while they were riding on a bus to school. The Student was charged with violating Local Board Rule 3.13, which prohibits "acts of a sexual nature on school property or buses ... including, but not limited to battery, intercourse, attempted rape, or rape." The Local Board delivered a letter, dated December 9, 1997, to the Student's grandmother that a hearing would be held on December 11, 1997, with a list of witnesses and notice that the Student had a right to counsel and to subpoena witnesses.

The Student and his mother attended the hearing held by the student disciplinary tribunal on December 11, 1997. The vice-principal testified that the Student admitted that he had touched the girl's breasts and placed his hand between her legs. The Student claimed that the girl had hit him in the chest and he responded by hitting her in the chest. He claimed that the touching was not sexual in nature.

The student disciplinary tribunal found the Student guilty of violating Rule 3.13 and expelled him from the regular school for the remainder of the 1997-1998 school year, with permission to attend an alternative school during the expulsion period. The Local Board voted to uphold the tribunal's decision when the Student appealed. The Student then appealed to the State Board of Education.

Upon appeal, the Student claims that the Local Board denied him due process because he was given insufficient time between the notice and the date of the hearing, which left him unable to secure counsel and unable to prepare for the hearing. As argued by the Local Board, the Student has not shown that he attempted to obtain counsel or what additional preparation he needed or could have made for the hearing. The Student also did not ask for a continuance. Neither Georgia law nor case law establishes a

minimum time that must elapse between the notice and the hearing. The State Board of Education, therefore, concludes that the Local Board did not deny the Student due process because the hearing was held two days after the notice was given.

The Student claims that he was denied due process because the notice of the hearing was delivered to his grandmother rather than to his mother. The record, however, shows that the Student lived with his grandmother. Additionally, the Student's mother was aware of and attended the hearing. The State Board of Education, therefore, concludes that the Student was not denied due process because the notice was delivered to his grandmother.

The Student also claims that the tribunal's decision was erroneously based solely upon hearsay evidence. The Local Board argues that the Student admitted to the vice-principal that he had touched the girl on her breasts and between her thighs.

Generally, admissions by a party are admissible as an exception to the hearsay rule. *See*, O.C.G.A. § 24-3-31 *et seq.* The vice-principal testified that he twice asked the Student whether he touched the girl and the Student admitted the touching. The second time the vice-principal asked the Student, he reminded the Student that he was also asking whether the Student placed his hands on the girl's thighs and the Student again admitted the touching.

"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). The Local Board failed to establish the admissibility of the victim's statement under the provisions of O.C.G.A. § 24-3-16. Since, however, the Student admitted the touching to the vice-principal, although he claimed the touching was not sexual but done in response to the girl hitting him, there was some admissible evidence from which the tribunal could conclude that there was a sexual battery. The State Board of Education, therefore, concludes that the tribunal's decision was not based solely upon hearsay evidence.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student was not denied due process and there was some evidence to support the tribunal's and the Local Board's decisions. Accordingly, the Local Board's decision is **SUSTAINED.**

This 14th day of May 1998.

Larry Thompson
Vice Chairman for Appeals