

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

|                            |   |                         |
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| <b>F. W.,</b>              | : |                         |
|                            | : |                         |
| <b>Appellant,</b>          | : |                         |
|                            | : |                         |
| <b>vs.</b>                 | : | <b>CASE NO. 1998-25</b> |
|                            | : |                         |
| <b>DEKALB COUNTY</b>       | : |                         |
| <b>BOARD OF EDUCATION,</b> | : |                         |
|                            | : |                         |
| <b>Appellee.</b>           | : | <b>DECISION</b>         |

This is an appeal by F. W. (Student) from a decision by the DeKalb County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him through the first semester of the 1998-1999 school year, with the option of attending alternative school, after finding him guilty of inappropriately touching a female student and making threats of bodily injury. The Student contends that the evidence was insufficient to support the findings. The Local Board's decision is sustained.

Evidence was presented at a hearing before a student disciplinary tribunal on March 16, 1998 that the Student touched a female student on the buttocks while she was standing in the lunch line. He also touched the same girl on the same day on her inner thigh while she was seated at her desk during a class they took together. The girl took offense during each incident. The Student appeared before the assistant principal for questioning and swore that he would "slit the throat" of whoever told on him. The Student was charged with violating the student rules of conduct 7a, making threats, 19b, violation of probation, and 23, inappropriate bodily contact.

The Student claims that the evidence concerning the touching was conflicting and he denied he ever touched the female student. "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 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. In the instant case, there was testimony from witnesses that they saw the Student touch the female student and that she protested. There was also testimony from an assistant principal that the Student made the threat.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the Local Board acted within its authority. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of August 1998.

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Larry Thompson  
Vice Chairman for Appeals