

STATE BOARD OF EDUCATION

STATE OF GEORGIA

Q. M.,	:	
	:	
Appellant,	:	CASE NO. 2003-02
	:	
vs.	:	
	:	
BIBB COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Q. M. (Student) from a decision by the Bibb County Board of Education (Local Board) to permanently expel him from high school after he appealed a decision to expel him for the remainder of the 2001-2002 school year and for the 2002-2003 school year with the option of attending an alternative school after finding him guilty of conspiracy to commit rape. The Student claims that the evidence did not support the charges; he was denied due process because he was unable to cross-examine the victim, and he was denied due process because the Local Board increased the punishment without informing him of that possibility as a result of his filing an appeal. The Local Board's decision is reversed.

This is a companion case to *J. O. v. Bibb Cnty. Bd. of Educ.*, Case No. 2003-01 (Ga. SBE, Oct. 10, 2002) and the facts are essentially the same. On April 11, 2002, a male and female student engaged in consensual intercourse in the girls' bathroom. The male student, J. S., left the bathroom and the female student remained behind so they would not be seen leaving together. Shortly thereafter, J. O. entered the bathroom and forced the female student to have sex with him. After he left, the Student allegedly entered the bathroom and also forced the female student to have sex with him. Another male student was also charged with entering the bathroom and raping the female student.

Following an investigation of the incident, the Student was charged with rape, sexual battery, indecent exposure, public lewdness, aggravated assault, simple assault, battery, conspiracy to commit rape, criminal trespass, terroristic threats, bullying, and failure to report knowledge of an event that could cause harm to others. A hearing was held before a student disciplinary board on May 10, 2002.

The Student claimed that he was not involved with the female student. He claimed that he was in the vicinity of the girls' bathroom because he was looking for the boy who had consensual intercourse with the female student to tell him that his mother was waiting for him. A video of the area near the girls' bathroom showed that the Student was in the area shortly after J. O. was seen in the video. The video, however, did not show the

door to the girls' bathroom so it was not possible to see who entered the bathroom. Twenty minutes later, the Student was again seen in the video. A statement given by the Student during the investigation was introduced. The statement, which was given six days after the incident, said:

Oral sex. School. J. O., J. S., C. S., Phillip. I went down to the 700 hall to get J. S. out of the restroom so he could go home. But I didn't touch her at all. She gave J. S. oral sex in the restroom on the 700 hall. And when I came to get J. S. out of the restroom, I went to the front of the school and left with my Mom and went home.

At the conclusion of the hearing, the student disciplinary tribunal found the Student guilty of conspiracy to commit rape and expelled him for the remainder of the 2001-2002 school year, with no option of attending alternative school, and for the 2002-2003 school year with the option of attending alternative school. When the Student appealed to the Local Board, the Local Board permanently expelled the Student without stating any reason. The Student then filed an appeal to the State Board of Education.

On appeal, the Student claims that inadmissible hearsay evidence was allowed and that there was no evidence that he conspired to commit rape. The Student also claims that the punishment was too severe and that the Local Board erred in questioning him when he appealed.

The Local Board claims there was non-hearsay evidence to support its decision. The only evidence it lists, however, is the Student's statement and the fact that the Student appears on the video tape on two occasions. The Local Board argues that the video discredits the Student's statement that he left the school after looking for J. S. The Local Board then argues that the Student's statement shows that the Student had knowledge that at least four other male students were involved in the incident and that the female student engaged in sexual activity in the bathroom.

"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 did not make any findings of fact to establish how it determined that the Student engaged in a conspiracy to commit rape. None of the facts cited by the Local Board establishes that the Student conspired to commit rape. The Student's statement shows that he was aware that J. S. was in the girls' bathroom, but J. S. was not charged with rape. Thus, any involvement or knowledge that the Student had about J. S. and the female student cannot rise to a charge of conspiracy to commit rape since J. S. was not charged with rape. The videotape showed that the Student was in the area of the girls' bathroom approximately 20 minutes after he said he had left school, but this fact does not establish that the Student was involved in any

conspiracy. None of the witnesses testified that there was a plot or plan to rape the female student, or that the Student engaged in any plot or plan to rape the female student.

The director of student safety testified that the female student told him that the Student was one of the males that raped her. The tribunal, however, apparently discounted this testimony because it did not find that the Student raped the female student.

The Student's statement lists the names of the male students who were charged in connection with the incident. The statement, however, only discusses the involvement of J. S. and the female student; it does not discuss the involvement of any of the other male students, nor does it establish that the Student was aware of the involvement of the other students when the incident occurred.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support either the tribunal's or the Local Board's decision that the Student conspired to commit rape. Accordingly, the Local Board's decision is **REVERSED**.

This _____ day of October 2002.

Cathy Henson
Chairperson, State Board of Education