

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. D.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2008-09
	:	
WAYNE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by C. D. (Student) from a decision by the Wayne County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to assign her to an alternative school until the end of the 2007-2008 school year after finding her guilty of engaging in inappropriate sexual behavior on campus. The Student claims that the evidence does not support the tribunal's decision. The Local Board's decision is sustained.

On February 27, 2007, a male student pulled the Student into the boys' locker room adjacent to the gymnasium. Inside the locker room were four other male students. The Student testified that once inside the locker room, despite her protests, three of the male students pulled down her gym shorts and inserted their fingers into her vagina while holding her hands behind her. When one of the boys spotted a coach nearby, the boys left out of the locker room. The Student claimed she did not report the incident because she was embarrassed, in disbelief, and afraid.

The male students testified that the Student was initially pulled into the locker room but she remained in the locker room voluntarily, even though she said, "No", one or two times. Two of the male students testified that the Student engaged in oral sex with one of them. All of the male students denied they had penetrated the Student's vagina with their fingers.

The tribunal found that the Student engaged in inappropriate sexual behavior and assigned her to an alternative school for the remainder of the year and for all of the 2007-2008 school year. When the Student appealed, the Local Board upheld the tribunal's decision. The Student then appeal to the State Board of Education.

On appeal, the Student claims that the school's investigation was flawed because the principal failed to fully investigate the Student's claims. The Student also claims that the testimony of the male students was not credible because they were participants who

were trying to avoid any disciplinary action. The Student also claims that it was clear from everyone's testimony that she was an unwilling participant in the episode.

"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 direct testimony from two male students that the Student engaged in inappropriate sexual conduct. Although the Student claims that the testimony of the two male students was not believable, the tribunal was the proper body to determine the believability of the witnesses. "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). It was also the tribunal's duty to determine whether the Student was a willing participant. There was testimony that even though the Student said "No" several times, she was laughing when she protested. The State Board of Education, therefore, concludes that there was some evidence to support the Local Board's decision.

The Student claims that the principal's investigation was flawed because her story was not thoroughly investigated by the principal. A student, however, does not have a due process right to have a school system investigate an incident in any particular manner. *See, Q. H. v. Newton Cnty. Bd. of Educ.*, Case No. 2007-25 (Ga. SBE, Apr. 11, 2007). The State Board of Education, therefore, concludes that the Student's claim that the principal's investigation was flawed is without merit.

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 Student's due process rights were not violated. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of December 2007.

William Bradley Bryant
Vice Chairman for Appeals