

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

B.H.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-09
	:	
HENRY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by B.H. (“Student”) from a decision by the Henry County Board of Education (“Local Board”) suspending the Student from school and all school activities from May 19, 2009 through the first semester of the 2009-2010 school year, with the option to enroll in the alternative school. Specifically, the Local Board found that the Student violated Section 2(7) of Local Board’s Student Handbook by engaging in indecent exposure by exposing his buttocks (“moonning”) in his classroom. For the reasons set forth below, this appeal is sustained because the record contains evidence supporting the decision of the Local Board.

I. BACKGROUND

The Student attends Eagles Landing High School. On May 15, 2009, the Student was in 4th Period English. The teacher was collecting materials and had her back to the Student. The Student walked towards the front of the classroom, pulled down his pants and boxers, and exposed his buttocks. The Student’s actions caused an up-roar in the classroom. The teacher asked two students what happened. The two students told the teacher that the Student “moonned” the class. The teacher forwarded the information to the school administration. The Local Board then notified the Student that he was charged with violating Section 2(7) of the Student Handbook.

The Student requested a hearing, and the Local Board convened a hearing tribunal. At the hearing, the teacher testified that she did not witness the Student’s actions, but heard an up-roar from the class, and then saw the Student grinning.

The teacher further testified that two students told her the Student “moonned” the class. The first student witness testified that the Student walked to the front of the class, pulled down his pants and pulled up his shirt, and showed all of his bare buttocks in front of the class. The first student witness further testified that this incident was not the first time the Student had done so.

The second student witness testified that the Student walked to the front of the class, pulled down his pants and boxers, showed his bare behind to the class, and then laughed. The second student witness further testified that the Student had done this before in class.

The Student testified that he had forgotten to wear a belt that day and that his pants came down when he bent over to put trash in the trash can. The Student further testified that he laughed because he was embarrassed.

After hearing all the evidence, the hearing tribunal found that the Student violated the Local Board's rules by engaging in indecent exposure by exposing his buttocks in his classroom. The hearing tribunal recommended suspending the Student from school and all school activities from May 19, 2009 through the first semester of the 2009-2010 school year, with the option to enroll in the alternative school. The Local Board affirmed the decision of the hearing tribunal.

II. ERROR ASSERTED ON APPEAL

A. Record Evidence.

The Student contends that the decision is not supported by the evidence. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb Cnty. Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is 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 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student was charged with indecent exposure under Section 2(7) of the Student Handbook. The Student contends that he did not engage in indecent exposure, but that he had forgotten to wear a belt that day and that his pants came down when he bent over to put trash in the trash can. The Student further testified that he laughed because he was embarrassed. The Student contends that a similar incident had occurred in 3rd period, at which time his 3rd period teacher had to tell him to pull up his pants. His 3rd period teacher testified that she had told the Student to do so, but that she only saw the top crack of his buttocks.

The Student further contends that the testimony of the Local Board's witnesses is inconsistent. The Student contends that the testimony varied as to whether the teacher was in the front or back of the classroom at the time of the incident. The Student further contends that the testimony varied regarding whether the incident occurred at the beginning or end of the class. This Board does not consider these alleged inconsistencies dispositive of the relevant facts in this case.

The record evidence from the two students is consistent that the Student walked to the front of the class, pulled down his pants, and showed his bare buttocks to the class. Both students testified that this was not the first time the Student had exposed his buttocks in class. The evidence further shows that the Student's actions were disruptive to the class. The hearing tribunal, as the finder of fact, was charged with weighing the evidence, including any inconsistencies and credibility of the witnesses. As set forth above, this Board is required to affirm the decision of the Local Board if there is any evidence to support the decision. The decision of the Local Board is supported by admissible evidence, and therefore must be affirmed.

B. Level of Punishment.

The Student asserts that the discipline he received is excessive. However, a violation of Section 2(7) of the Local Board's Student Handbook includes punishment up to expulsion. Thus, the punishment received by the Student is within the range of punishment allowed by the Local Board's policy. Moreover, "The State Board of Education . . . cannot adjust the level or degree of discipline imposed by a local board of education." B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 1998). Thus, this Board cannot alter the Student's discipline.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of October, 2009.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS