

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

A.M.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-84
	:	
HENRY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by A.M. (“Student”) from a decision by the Henry County Board of Education (“Local Board”) expelling the Student from school from April 14, 2010 through the first semester of the 2010-2011 school year, with the option to enroll in the alternative school. The Local Board took these actions because it found that the Student violated the Local Board’s rules by possessing and displaying a cell phone containing sixty-five (65) to seventy (70) pictures of nude females, some of whom are students. For the reasons set forth below, the decision of the Local Board is SUSTAINED.

I. BACKGROUND

The Student attended Eagles Landing Middle School (“Eagles Landing”). On or about March 25, 2010, the Eagles Landing school administration learned that the Student was in possession of a cell phone containing inappropriate pictures. The Student was questioned by the Assistant Principal, who requested the Student provide him with the cell phone. The Student complied. The Assistant Principal found sixty-five (65) to seventy (70) nudge pictures of females on the cell phone, some of whom were students at Eagles Landing. On March 29, 2010, the Local Board sent the Student a charge letter notifying him of his suspension and disciplinary hearing arising out of his possession of the cell phone containing nude pictures. The Student requested a hearing and the Local Board convened a hearing.

At the hearing, the Student did not contest that he possessed the cell phone with pictures of nude females. The sixty-five (65) to seventy (70) cell phone pictures were introduced. The Assistant Principal testified that the Student admitted that his cell phone contained inappropriate pictures, but that he lied about the pictures being of students attending Eagles Landing. Several students testified that they viewed the nude pictures on the Student’s cell phone while at school and recognized some of the pictures of students attending Eagles Landing. After hearing all the evidence, the hearing officer found that the Student’s conduct violated the Local Board’s rules. The hearing officer recommended expelling the Student from April 14, 2010 through the first semester of the 2010-2011 school year, with the option to enroll in the alternative school. The

Local Board affirmed the decision of the hearing officer. The Student has appealed the Local Board's decision to this Board and contends that his due process rights were violated.

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 County 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 offenses for possessing sexual or obscene pictures (Section 2, Rule #7), using obscene or graphic materials (Section 1, Rule # 15), and displaying or using a cell phone without the consent of the principal or his designee (Section 1, Rule # 6). In addition, the Student was charged with giving false or misleading information (Section 1, Rule # 5) and violations that constitute a felony under Georgia law (Section 3, Rule # 6).

The record shows that it is undisputed that the Student possessed a cell phone containing approximately sixty-five (65) to seventy (70) nude pictures of minors. Thus, based on this alone, the record contains sufficient evidence to support a Section 2, Rule # 7 violation. Thus, the Student's assertions are without merit.

Furthermore, the Student handed his cell phone to other students and was aware that the students were using his cell phone and/or viewing the pictures. The possession of the pictures of nude minors is a felony. Finally, the Assistant Principal testified that the Student lied about whether the pictures were of students attending Eagles Landing. The record shows that some of the pictures were of students attending Eagles Landing. Thus the record contains sufficient evidence to support the other charges made by the Local Board, including the finding that the Student deliberately provided false or misleading information. Thus, the decision of the Local Board must be affirmed.

B. Due Process.

The Student asserts that his due process rights were violated because the Local Board's rules allow for the suspension of a student based upon felony allegations pending in a parallel criminal proceeding. The Student fails to cite any legal authority for his assertion. The Student's assertions are without merit. The Local Board possesses the authority to take disciplinary actions arising out of a student's actions that violate its rules. The Local Board provided the Student a hearing on conduct for purposes of student discipline. Because the conduct also may give rise to a felony under Georgia law does not violate due process.

Furthermore, the Student contends that the Local Board engaged in a whimsical search of the Student. This assertion is without merit. The record shows that the Assistant Principal was informed that the Student's cell phone contained inappropriate pictures. Thus, the Local Board had sufficient information to constitute reasonable suspicion to question the Student and to request his cell phone.

C. Level of Punishment.

The Student asserts that the discipline he received is draconian. "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). Moreover, based upon the nature of the allegations this assertion is without merit. 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 August 2010.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS