

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KEVIN K.,	:	
	:	
Appellant,	:	CASE NO. 1987-22
	:	
V.	:	
	:	
LAGRANGE CITY BOARD	:	DECISION
OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Kevin K. (hereinafter "Student") from a decision of the LaGrange City Board of Education (hereinafter "Local Board") to affirm the decision of its appointed hearing officer that the Student be expelled for the remainder of the spring and summer quarters of the 1987 school year and could return to school in the fall of 1987 only if he submitted a written statement from a certified counselor showing evidence of counseling sessions and that the Student is better able to control his actions, inappropriate behaviors and to demonstrate a respectful attitude toward teachers. Additionally, upon the Student's return, he is to be placed on probationary status for two semesters. The reason for the discipline was that the Student placed obscene phone calls to a teacher. The Student contends on appeal that the record does not show evidence that the Student caused a violation of any lawful mission, process or function of the school, that he committed any serious violation of the criminal laws, and that the punishment is too severe.

PART II

FACTUAL BACKGROUND

The Student is a male who was in junior high school during the last school year. The Student was charged with making obscene phone calls to one of his female teachers. The Local Board charged the Student with violating the following rules:

7.31 No student shall, in any manner, by the use of violence, force, noise, coercion, threat, intimidation, passive resistance or any other conduct, intentionally cause the disruption of any lawful mission, process or function of the school or engage in any conduct for the purpose of causing the disruption or obstruction or lawful mission process or function of the school.

7.39 Students will be expected to conduct themselves in a proper and respectful manner. No student shall use profanity to other students or to a teacher, principal or other staff member and not be disrespectful in their attitude toward teachers, principals and other staff members.

7.46 A student who has been charged with any other serious violation of the criminal laws, may be removed from the school by the principal upon the approval of the Superintendent when such action is deemed necessary to protect other students, or to avoid substantial disruption to school operation.

A hearing officer for the Local Board heard the case against the Student and, from the evidence, it is clear that the Student made at least two obscene phone calls to the teacher. In both calls, the Student used sexually explicit language and a copy of a tape made of the two calls is a part of the records.

The only defense offered at the hearing was that the Student was retaliating against the teacher because she allegedly slapped the Student some six months before the obscene phone calls began.

The Student appealed the decision of the hearing officer to the Local Board and the Local Board sustained the hearing officer's decision. The record does not reflect that any new issues were raised in the hearing before the Local Board.

The Student timely filed this appeal to the State Board of Education.

PART III
DISCUSSION

The State Board of Education is authorized to hear appeals from decisions made by local boards on matters of local controversy involving the construction or administration of the school laws. O.C.G.A. §20-20-1160. The State Board of Education is not authorized to substitute its judgment for that of the local board, and must sustain the decision of the local board if there is any evidence to support the local board's decision, absent an abuse of discretion or violation of law by the local board. See, Ransum v. Chattooga Cnty. 3d. of Edt, 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976 11.

The Student appeals to the State Board of Education based upon the following enumeration of errors:

1. The decision is contrary to the evidence;
2. The decision is contrary to the law;
3. The decision is too harsh and severe in light of all facts and circumstances surrounding this individual;
4. Section 7.31 of the policies of the LaGrange Board of Education is unconstitutionally vague, arbitrary and capricious in that it does not sufficiently state what constitutes a violation;
5. Section 7.39 of the policies of the LaGrange Board of Education is unconstitutionally vague, arbitrary and capricious in that it does not sufficiently state what constitutes a violation.
6. Section 7.46 of the policies of the LaGrange Board of Education is unconstitutionally vague, arbitrary and capricious in that it does not sufficiently state what constitutes a violation.

7. The prosecution of (the Student] did not sufficiently carry its Burden of Proof against the said (Student].

In the Student's brief, the Student contends there is no evidence the Student caused a disruption of any lawful mission, process or function of the school, the obscene phone calls did not amount to a serious violation of the criminal laws, and the punishment was too severe and harsh.

While the Student has raised numerous issues on appeal, it is clear that the Local Board was within its authority in actions it took. There was clearly evidence before the Local Board from which the Local Board could determine Rule 7.39 (use of profanity towards a teacher) was violated by the Student. Rule 7.39 is not constitutionally vague, and in fact, the substance of the rule is of such a nature that violation of the *substance* of the rule would be grounds for discipline, even were the rule not in existence. Local boards are not bound to establish criminal codes to insure decent behavior among their students. The purpose of disciplinary rules is generally to insure that Students are aware of what conduct *is* proscribed. Rule 7.39 meets that purpose.

The discipline imposed by the Local Board for the Student's violation of Rule 7.39 was not an abuse of *discretion* by the Local Board. The degree of discipline imposed by a Local Board *is* discretionary; unless the discipline is *so* harsh that it is shocking to the conscience. In this *case*, it *is* the language used by the Student in making the obscene phone calls which is shocking, and not the discipline imposed by the local Board.

Because it is clear the Student violated Rule 7.39 and the discipline imposed by the Local Board was within its authority, there is no reason to discuss the other enumerations of error raised by the Student on appeal.

PART IV

DECISION

Based upon the foregoing discussion, the record and the briefs of counsel, the State Board of Education concludes that there was evidence to support the decision of the Local Board and the discipline imposed by the Local Board was within its authority. The decision of the Local Board is, therefore,

SUSTAINED.

Mr. Foster did not participate in any cases in Executive Session and specifically recused himself in Case No. 1987-27, Laura Fry v. Clayton County.

Juanita Baranco
Acting Vice Chairman for Appeals