

STATE BOARD OF EDUCATION

STATE OF GEORGIA

L. J.,	:	
	:	
Appellant,	:	
	:	CASE NO. 1995 - 6
vs.	:	
	:	DECISION
SCREVEN COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by L. J. (Student) from the December 15, 1994, decision of the Screven County Board of Education (Local Board) to permanently expel him from school with the option of returning to alternative school at the beginning of the 1995-1996 school year after a Student Disciplinary Tribunal found him guilty of sexually harassing a female student by soliciting her to perform oral sex. The Student claims that the punishment is too harsh and violates both statutory and constitutional rights granted to him. The Local Board's decision is sustained.

The Student, a seventeen-year-old tenth-grader at the time of the Student Disciplinary Tribunal's hearing, was charged with violating the Local Board's policy that prohibits sexual harassment. Additionally, he was charged with violating the terms of a probation imposed by a different Student Disciplinary Tribunal during the 1993-1994 school year.

During the Student Disciplinary Tribunal hearing, which was held on November 21, 1994, evidence was presented that the Student repeatedly solicited a female student to perform oral sex. The Student denied that he made the statements attributed to him and claimed that the female student and the other witnesses misunderstood what he was saying. The Student Disciplinary Tribunal found the Student guilty of the charges and voted to permanently expel him from school. The Student then appealed to the Local Board.

The Local Board affirmed the findings and conclusions of the Student Disciplinary Tribunal, but decided to permit the Student to return to an alternative school at the beginning of the 1995-1996 school year to complete his education. The Student then filed a timely appeal to the State Board of Education.

On appeal, the Student apparently claims that he was expelled because of his probation from the previous year, which resulted when he stabbed another student off campus. He argues that the Local Board does not have the authority to control off-campus activity and that its decision to impose any form of probation upon him was ultra vires. Regardless of the merits of the Student's argument, his claim cannot be considered now because the appeal period has long passed to review the Local Board's decision made during the 1993-1994 school year. Appellant's argument is simply a way of making a collateral attack upon a decision that must stand. The State Board of Education, therefore, concludes that there is no merit in this claim.

The Student next claims that the decision to expel him for the remainder of the 1994-1995 school year constitutes arbitrary and excessive punishment. The Student argues that the Local Board failed to consider other forms of punishment that are more appropriate to the offense. “A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. See, Boney v. County Board of Education of Telfair County, 203 Ga. 152 (1947); Bracelev v. Burke County Bd. of Ed., Case No. 1978—7.” Joseph N. v. Jasper Cnty. Bd. of Educ., Case No. 1981-40 (Ga. SBE, Feb. 11, 1982). In this case, the Local Board had to consider alternative forms of discipline because it reduced the Student Disciplinary Tribunal’s decision from permanent expulsion to expulsion only during the remainder of the 1994-1995 school year. Although the Local Board did not reduce the punishment as much as the Student desired, its actions indicate that it did consider alternatives. The State Board of Education, therefore, concludes that the Local Board’s decision was not arbitrary or excessive.

The Student next claims that the decision to expel him for the remainder of the 1994-1995 school year violates the statutory requirements for student support teams, in—school suspension programs, and statewide standards for professionalism, performance, and ethics. We do not agree. The regulations that require the creation of student support teams, in—school suspension programs and alternative schools were designed to provide students with additional assistance; they were not designed to hinder local boards of education in their maintenance of discipline in the schools. See, Rules of the Georgia Department of Education, § § 160-3-2(2) (i) -3, 160-4-2-.02(3) (a), 160-4-2-.32(1), 160-4-8-.07(1), and 160-4-8-.06. As additional resources, they also do not add another layer of procedural rights that students are intended to have before they can be disciplined. Accordingly, the State Board of Education concludes that the Local Board’s decision to expel the Student for the remainder of the 1994-1995 school year does not violate any statutory requirements.

Finally, the Student claims that the decision to expel him for the remainder of the 1994-1995 school year violates his constitutional and statutory right to receive a free and adequate public education. The Student argues that the Georgia Constitution guarantees every citizen a free public education, Ga. Constitution of 1983, Art. VIII, Sec. 1, Par. 1, and public schools are required to provide each student with an opportunity to develop certain competencies and have access to quality programs, O.C.G.A. § 20-2-131. The Student has not cited any cases that establish that the right to obtain a free public education is an absolute right without any concurrent responsibilities on his part. The Student’s argument fails to consider his responsibility to obey the policies established by the Local Board while he is attending school. The Local Board provided him with an opportunity to obtain a free public education, but he failed to exercise his responsibility to avoid harassing other students who were also being provided with the opportunity to obtain a free public education. The Local Board thus had the power to deprive the Student of his ability to attend school. See, O.C.G.A. § 20-2-755.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board did not abuse its discretion in expelling the Student for the remainder of the 1994-1995 school year, nor did the Local Board deprive the Student of any constitutional or statutory rights. Accordingly, the Local Board's decision is SUSTAINED.

This 11th day of May, 1995.

Mrs. King, Mr. Sessoms and Mr. Williams were not present.

Robert M. Brinson
Vice Chairman for Appeals