

STATE BOARD OF EDUCATION

STATE OF GEORGIA

F. J.,

Appellant,

vs.

**COBB COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 2004-11

DECISION

This is an appeal by F. J. (Student) from a decision by the Cobb County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him for 19 days after finding him guilty of climbing into the ceiling of the men's bathroom, going to the women's bathroom, and peering into the women's bathroom while it was occupied by female students. The Student claims that the principal was pressured to increase the suspension period from 10 days to 19 days and the school system failed to issue a subpoena for a witness. The Local Board's decision is sustained.

On April 28, 2003, the Student removed a ceiling tile in the men's restroom. He climbed into the area above the ceiling tiles and made his way to the area above the women's restroom, where he removed a ceiling tile and began looking at the female students who were present. One female student spotted him and began yelling to the others that someone was watching them. The student scrambled back to the men's restroom. A teacher, who had overheard the commotion, tried to open the door to the men's restroom, but the Student held it shut. A custodian climbed into the ceiling area in the women's restroom and looked into men's restroom and saw the Student leaning against the door.

The Student finally opened the door after an assistant principal arrived on the scene. The assistant principal took the Student to his office where the Student admitted that he had climbed into the ceiling and had been looking into the women's restroom.

On May 19, 2003, following a postponement at the Student's request, a student disciplinary tribunal found the Student guilty of sexual harassment and suspended him for the remainder of the school year, which was a total of 19 days. When the Student appealed, the Local Board upheld the tribunal's decision. The Student then appealed to the State Board of Education.

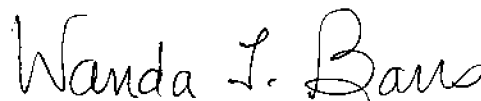
The Student has raised two issues on appeal: (1) he was denied a subpoena for a witness, and (2) he was denied due process because the period of his suspension was arbitrarily changed.

There is no evidence in the record that the school system failed to issue a subpoena for a witness. A request for a subpoena was never produced at the hearing and the Student's attorney acknowledged at the hearing that they may not have asked for a subpoena. The attorney then agreed to proceed without objection, thus waiving any error. The Student has not shown that the absence of the witness caused him any harm. The State Board of Education concludes that the Student's claim of error because a subpoena was not issued is without merit.

The Student next claims that he was denied due process because his suspension was arbitrarily increased from 10 days to 19 days. There is no evidence that the suspension period was increased. When the tribunal heard the evidence, it suspended the Student through the end of the school year, which followed the recommendation of the principal. The principal's recommendation, however, is only a recommendation and the decision rests with the tribunal. In this situation, the Student was initially suspended for 10 days while a determination was made whether he should be suspended for a longer period.¹ The Student's principal decided to recommend suspension through the end of the school year. The principal, however, was not the one to make the ultimate decision on the length of the suspension. Instead, the tribunal made the decision. Thus, regardless of the principal's reasons for making the recommendation, there was no denial of due process since it was only a recommendation.

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 was not denied due process. Accordingly, the Local Board's decision is SUSTAINED.

This 14th day of November 2003.



Wanda T. Barrs
Chairperson - State Board of Education

¹ A student is not considered to be denied any due process rights if a school system suspends the student for up to 10 days without a hearing. *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 42 L.Ed.2d 725 (1975).