

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>K. D. and A. C.,</b>	:	
	:	
<b>Appellants,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NOS. 2004-31 and</b>
	:	
<b>COLUMBIA COUNTY</b>	:	<b>2004-32</b>
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is a consolidated appeal by K. D. and A. C. (Students) from a decision by the Columbia County Board of Education (Local Board) to suspend them from school for the remainder of the first semester of the 2003-2004 school year and to bar them from any extracurricular activities for the remainder of the 2003-2004 school year after finding them guilty of inappropriate behavior. The Students claim that they did not violate any provision of the Student Handbook, there was no evidence that they engaged in any improper activity, they were denied due process because they were not permitted to call witnesses on their behalf, the claims upon which they were charged are unconstitutionally vague and violate fundamental principles of due process and fair play. The appeals are dismissed because the issues raised are moot.

On November 14 and 15, 2003, the Students, along with other members of their debate team, participated in a debate competition held in Carrollton, Georgia at the West Georgia College campus. A. C. is a senior male student who was designated as a STAR Student and a National Merit Finalist, while K. D. is a sophomore female student. Both of them are members of the National Beta Club, Drama Club, Young Democrats, and the Debate Team.

The team arrived on the West Georgia College campus around 3:00 p.m. on November 14, 2003 and went directly to the competition without eating. They finished up and arrived at their motel at around 12:30 a.m. on November 15, 2003. Relying on the fact that the debate team students were some of the best students in the high school, the debate team coach gave the students few directions. The debate team members did not immediately go to bed but began visiting one another and watching television in the different rooms of the motel. K. D. was assigned a room with three other female students directly across the hall from the debate team coach. K. D. and A. C. were watching television in K. D.'s room while other students came in and out of the room during the night. Around 4:00 a.m., K. D. fell asleep on the bed. At around 4:30 a.m., one of the coach/sponsors from the other end of the hall entered the room while trying to locate the source of some students talking. The coach/sponsor found both K. D. and A. C. asleep on the bed. The door was propped open and K. D. was fully clothed. The coach/sponsor did not observe whether A. C. was clothed. K. D.'s roommates were not in the room.

Assuming that the Students had engaged in sexual conduct, the coach/sponsor reported the incident. The Students were charged with “improper behavior,” although there is nothing in the Student Handbook that defines “improper behavior.” In other words, the Students did not violate any rules set out by the Local Board or otherwise contained in the Student Handbook, but were charged with improper behavior based upon “the inherent authority of the principal.”

An assistant superintendent acted as the disciplinary hearing tribunal at separate hearings held on December 4, 2003. Although the Students subpoenaed several students as witnesses to testify on their behalf, the school system refused to enforce the subpoenas. The only evidence produced by the school system was that the Students were found asleep in the same motel room at approximately 4:30 a.m. by one of the debate coach/sponsors while she was going from room to room trying to find out where some voices were coming from. There was no evidence that the Students engaged in any inappropriate conduct and there were no allegations that they had done anything other than being found asleep together in a motel room.

At the conclusion of the hearing, the hearing officer found the Students guilty of inappropriate behavior and suspended them until the end of the third nine-week period of the 2003-2004 school year with the option of attending an alternative school during the period of suspension. In addition, the Students were placed on probation for the remainder of their time in the school system.

When the Students appealed the decisions to the Local Board, the Local Board reduced the suspension period to the end of the first semester of the 2003-2004 school year but banned the Students from participating in any extra curricular activities for the remainder of the 2003-2004 school year. The Students then filed separate appeals to the State Board of Education. Because the facts are identical in both appeals, they were consolidated for purposes of review.

The Local Board argues that the issues raised by the Students are moot and the State Board cannot provide the Students with any relief because their suspension periods are over and they are back in school. In addition, the Local Board argues that the State Board of Education is without jurisdiction to consider a case where the only issue is the right to participate in extracurricular activities, citing *Parents Against Realignment v. Georgia High School Association*, 271 Ga. 114, 516 S.E.2d 528 (1999) for the proposition that the barring of a student from extracurricular activities does not present a justiciable controversy. In *Parents Against Realignment*, the Court said that there was no deprivation of any constitutional or statutory rights when the Georgia High School Association realigned the various interscholastic sport regions in the state because “‘interscholastic sports are extracurricular and not essential to the prescribed curriculum’.” 271 Ga. at 114. (Cites omitted.) The question here is whether there is a difference between extracurricular sports and extracurricular academic activities, such as debate, that would create any difference so that the banning of a student’s ability to engage in the academic activities would present a justiciable issue and make the present appeals reviewable.

The Students claim that both the decision finding them guilty and the denial of their ability to engage in extracurricular activities will have an adverse impact on their ability to obtain scholarships and gain acceptance in the colleges and universities they are interested in attending after graduation. As an example, the Students cite Reg. § 160-4-2-.10, The Governor's Scholarship Program, and point out that to obtain a scholarship under the program, a student has to participate in three competitive interscholastic activities during grades 9-12 and has to have been elected or appointed to a position of leadership in two different activities sponsored by the school. The Students argue that the adverse impact the decision will have on their ability to obtain scholarships and college or university entrance denies them a property interest which must be recognized.

While the Students argument has some allure, the same argument could be made for students who engage in extracurricular athletic events. If a student was denied the ability to play football, basketball, soccer, tennis, or golf, the student could potentially be denied athletic scholarships and the ability to attend desired colleges or universities. The Georgia Supreme Court, nevertheless, has held that students do not have any constitutional or statutory rights to engage in extracurricular interscholastic sports. *Parents Against Realignment, supra*. Under this analysis, it follows that academic extracurricular activities are also not constitutionally or statutorily protected and their denial does not present any justiciable issue. The State Board of Education, therefore, cannot provide the Students with any relief, thereby making their appeals moot.

Although the State Board of Education cannot provide the Students with any relief, it is clear that the school system and the Local Board denied them basic due process. To begin with, the charge of "inappropriate behavior" was made up from whole cloth without any basis in the policies of the Local Board or in the Student Handbook. They were disciplined because the principal thought the situation looked bad, but without any showing that there was any necessity for discipline. In addition, the Students were denied the right to call witnesses to testify on their behalf, even though this right is statutorily provided. O.C.G.A. § 20-2-754(b)(2). They were thus denied procedural due process.

Based upon the foregoing, it is the opinion of the State Board of Education that the denial of the opportunity to engage in extracurricular activities does not provide a justiciable issue and the issues raised are moot because the State Board of Education cannot provide the Students with any relief. Accordingly, the appeals are hereby DISMISSED.

This \_\_\_\_\_ day of April 2004.

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William Bradley Bryant  
Vice Chairman for Appeals