

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. R.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-34
	:	
HOUSTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by J. R. (Student) from a decision by the Houston County Board of Education to expel him until the end of the 2003-2004 school year, with the option of attending alternative school during the expulsion period, after finding him guilty of sexually harassing a teacher, showing disrespect to the teacher, and engaging in behavior subversive to the good order and discipline in the school. The Student claims that the evidence did not support the charges. The Local Board's decision is sustained.

On November 14, 2003, the Student, a tenth-grader, was walking in the hallway between classes. The hallway was crowded and, according to the Student's testimony, another student bumped him and pushed him into a teacher who was walking in front of him. The Student apologized to the teacher and said someone had bumped into him. The teacher later claimed that the Student intentionally touched his penis against her buttocks. The Student was charged with sexual harassment of a teacher, disrespect of a staff member, and engaging in conduct subversive to the good order and discipline of the school.

At the hearing before a student disciplinary tribunal, the Student argued that the touching was accidental and uncontrollable, the incident involved only a momentary touching, and it was a physical impossibility for his penis to touch the teacher's buttocks because of the difference in their heights. The teacher is five foot four and the Student stands over six feet tall. In addition, the hallway where they were walking slanted downward so that the teacher would have been even lower than normal. The teacher also testified that she "believed" the touching was intentional because of the way the student apologized to her.

Whether the Student's touching of the teacher was intentional, and whether he touched her on the buttocks with his penis, were decisions that the tribunal had to make based upon the testimony of the witnesses. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of

discretion or the decision is so arbitrary and capricious as to be illegal.” *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).” *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). Since there was some evidence to support the tribunal’s decision, the State Board of Education is bound by those findings.

Based upon the foregoing, it is the opinion of the State Board of Education that there was some evidence to support the Local Board’s decision. Accordingly, the Local Board’s decision is
SUSTAINED.

This _____ day of May 2004.

William Bradley Bryant
Vice Chairman for Appeals