

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>E. J.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-54</b>
	:	
<b>HENRY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by E. J. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel her until the end of the first semester of the 2005-2006 school year, with the option of attending an alternative school during the expulsion period, after finding her guilty of possessing an alcoholic beverage on campus and of giving an alcoholic beverage to another student. The Student claims that she suffers from Attention Deficit Hyperactivity Disorder (ADHD) and should not be removed from the school. Additionally, she claims that she was improperly punished more than the other student who was involved in the incident. The Local Board's decision is sustained.

On March 29, 2005, school administrators discovered that the Student, a seventh grader, had brought alcohol to the campus. Upon questioning, the Student admitted that she had given alcohol to another student. The Student was charged with possession of alcohol and distribution of alcohol on campus.

At the hearing before a student disciplinary tribunal, the Student admitted that she had brought the alcohol on campus and gave alcohol to another student. There was no evidence that the Student was enrolled as a special education student. The tribunal decided to expel the Student until the end of the first semester of the 2005-2006 school year with the option of attending an alternative school during the expulsion period. The Local Board upheld the tribunal's decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

On appeal, the Student claims that she is subject to the provisions of the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* (the "Act" or "IDEA") because she has ADHD and, therefore, should not have been expelled from school.<sup>1</sup> IDEA has specific provisions for the identification of and eligibility of a student

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<sup>1</sup> There was no evidence that the Student actually has ADHD. Instead, the evidence only showed that the Student may exhibit some symptoms of ADHD.

for special education services. There was no evidence presented that the Student is receiving special education services or is eligible for the protections provided by the Act. IDEA also provides for a hearing process for any violations of the Act that does not directly involve the State Board of Education. Consequently, the State Board of Education is not the forum in which to determine whether there has been a violation of IDEA. The Student's claim that she has ADHD, therefore, does not provide any basis for interfering with the Local Board's decision.

The Student also claims that she received disparate treatment because the other student involved in the incident was not punished for the same length of time she is being punished. The claim, however, is without merit. First, there is nothing in the record concerning the other student's punishment. The State Board of Education must confine its review to the record established before the Local Board and any claims based on facts not contained in the record cannot be considered. Secondly, the students were not similarly situated in that the other student did not bring the alcohol on campus, whereas the Student brought the alcohol to school and provided it to the other student.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not exceed its authority or abuse its discretion in expelling the Student until the end of the first semester of the 2005-2006 school year. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of August 2005.

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William Bradley Bryant  
Vice Chairman for Appeals

### **SUMMARY**

This is an appeal by E. J. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel her until the end of the first semester of the 2005-2006 school year, with the option of attending an alternative school during the expulsion period, after finding her guilty of possessing an alcoholic beverage on campus and of giving an alcoholic beverage to another student. The Student claims that she suffers from Attention Deficit Hyperactivity Disorder (ADHD) and should not be removed from the school. Additionally, she claims that she was improperly punished more than the other student who was involved in the incident. The Local Board's decision is sustained.