

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

B.M.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2009-16
	:	
HENRY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by B.M. from a decision by the Henry County Board of Education (“Local Board”) to place B.M. in a two-week in-school suspension and to suspend him from all school activities for the first semester of the 2008-2009 school-year. Specifically, the Local Board found that B.M. violated the Local Board’s rules by entering an unauthorized area designated for girls only.

I. FACTUAL BACKGROUND

On August 19, 2008, B.M. and two other students entered an unauthorized area of the Henry County Middle School gym, which was designated for girls only. B.M. and the two other students entered the hallway of the girls’ side of the gym. B.M. acknowledges that he entered the hallway of an unauthorized area. At the time, the girls’ softball team was changing clothes in the locker room. Testimony from some of the female students indicates that B.M. was at the locker room door and stuck his head into the doorway. B.M. denies entering the locker room area. Testimony of the female students shows that one or more of the boys made derogatory and sexual comments.

II. ERRORS ASSERTED ON APPEAL

A. Record Evidence.

B.M. asserts that the evidence does not support the decision of the Local Board. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb Cnty. Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless

there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Local Board’s Student Handbook defines sexual misconduct as “entry into areas designated for the opposite sex only.” The Local Board provided testimony that B.M. entered an unauthorized area designated for girls only. B.M. admits that he entered the unauthorized area of the girls’ gym. B.M. disputes the testimony that he entered the girls’ locker room. Based upon B.M.’s admission and the testimony of other students, the record contains sufficient evidence showing that B.M. entered a girls’ only unauthorized area. Thus, the decision of the Local Board is supported by admissible evidence.

B. Videotape.

B.M. alleges that the Local Board erred because the videotape, when initially viewed was in good condition, but at the time of the hearing it malfunctioned. B.M. contends that the videotape would have shown that he did not enter the girls’ locker room. The Board is concerned about the Local Board’s failure to exercise a reasonable standard of care in ensuring that the videotape was properly maintained. However, based upon the record, the Board concludes that while the videotape would have assisted in determining the exact location of the boys, it would not have changed the record testimony that the boys were in an unauthorized area designated for girls only. Thus, in this case, any error by the Local Board was harmless.

C. Verbatim Electronic or Written Record.

B.M. alleges that the Local Board erred because the transcript of the hearing was not maintained during the viewing of the locker room and the viewing of the videotape. B.M. further alleges that the transcript does not accurately reflect the testimony during the hearing. O.C.G.A. § 20-2-754(b)(5) requires the Local Board to maintain “[a] verbatim electronic or written record of the hearing. . . .” This Board agrees that the Local Board should have maintained a record of the entire proceedings, including the viewing of the locker room and the videotape. This Board is further concerned about the number of instances in which the transcript appears inaudible. However, in this case, the deficiencies in the record do not change the record testimony that the boys were in an unauthorized area designated for girls only. Thus, in this case, any deficiencies in the record did not affect B.M.’s right of appeal. Dax C. v. Floyd County Bd. of Educ., Case No. 1991-12 (Ga. SBE, Aug. 1991).

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of January, 2009.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS