

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>S.H.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2009-37</b>
	:	
<b>HENRY COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by S.H. (“Student”) from a decision by the Henry County Board of Education (“Local Board”) assigning the Student to a long-term suspension through the second semester of the 2008-2009 school year, and allowing the Student to attend the Local Board’s alternative school. Specifically, the Local Board found that the Student violated the Local Board’s Code of Conduct by viewing and disseminating a nude picture of another student via cell phone.

**I. BACKGROUND**

The Student attends Eagles Landing Middle School. On January 27, 2009, the Student viewed a nude picture of a minor classmate on a cell phone. Later that day, while in the library, the Student viewed the nude picture again, and also forwarded the nude picture to another student via cell phone. The school administration was informed about the nude picture by students. Upon investigation, the Student admitted that she viewed the nude picture and forwarded it via cell phone.

The Student was charged with violating the Local Board’s Code of Conduct for Section 1 (use of a cell phone) and Section 2 (sexual misconduct). After the Student was provided a hearing, the hearing officer imposed a long-term suspension through the second semester of the 2008-2009 school year. The hearing officer further allowed the Student to attend the Local Board’s alternative school. The Local Board affirmed the decision of the hearing officer.

**II. ISSUE ON APPEAL**

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 Student does not dispute that she viewed a nude picture on a cell phone and forwarded the picture to another student from the cell phone. Thus, the decision of the Local Board is supported by admissible evidence.

The Student contends that the punishment of a long-term suspension is too severe and unjust. “The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education.” B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 10, 1998). Moreover, Section 2, Paragraph 7 of the Code of Conduct defines sexual misconduct as “possessing, accessing or viewing obscene or vulgar materials.” The Local Board’s Code of Conduct provides the Local Board with the authority to impose a long-term suspension or expulsion for a Section 2 offense. Therefore, the Local Board’s punishment is consistent with its Code of Conduct.

### **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 May, 2009.

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WILLIAM BRADLEY BRYANT  
VICE CHAIRMAN FOR APPEALS