

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

C.B.	:	
	:	
Appellant,	:	
	:	CASE NO.: 2022-28
v.	:	
	:	DECISION
DEKALB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by C.B. (“Student”) from a decision by the DeKalb County Board of Education (“Local Board”) suspending the Student from the DeKalb County School District (“District”) from February 25, 2022 through April 13, 2022. At the conclusion of the suspension, the Local Board gave the Student the option to immediately reenroll at any one of the Local Board’s high schools, except for Chamblee High School (“School”). The Local Board prohibited the Student from returning to the School, and instead recommended the Student attend another District high school. The Local Board took these actions because it found that the Student violated its rules prohibiting Sexual Battery and Off-Campus Misconduct. For the reasons set forth below, the Local Board’s decision is **REVERSED**.

I. STATEMENT OF FACTS

The record shows that on the date of the suspension, February 25, 2022, the Student was an eleventh (11th) grader at the School. The incident which led to the suspension, however, occurred on September 13, 2021. At approximately 1 a.m., the Student biked to a female student’s house with whom he had a previous relationship. The female student met the Student at the end of her driveway and the two walked to a nearby park. Once at the park, the students smoked marijuana and had sex.

Thereafter, the Student told other students at the School about having sex with the female student. Other students began calling the female student pejorative names. The female student told a boyfriend about the incident at the park. Subsequently, the Student and the boyfriend got into a fight on February 25, 2022 over an unrelated issue. During the investigation of the fight, the Student stated that part of the dispute was likely related to the sexual encounter which occurred at the park in September 2021. The Student and the female student gave statements about what occurred at the park, and there were allegations that the sex was nonconsensual. After questioning the female student, the School suspended the Student for violating the Local Board’s code of conduct Rules 17A Off-Campus Misconduct and 23C Sexual Assault or Battery.

A disciplinary hearing was conducted on March 9, 2022. The hearing officer found the Student in violation of the Local Board’s policies and permanently expelled the Student from the District. Thereafter, the Student appealed the hearing officer’s decision to the Local Board. The Local Board affirmed the hearing officer’s determination that the Student violated the Local

Board's policies but reduced the punishment from permanent expulsion from the District to a suspension with time served as of April 13, 2022. As part of its decision, the Local Board issued an administrative transfer prohibiting the Student from returning to the School but allowing the Student to attend any other District high school. The Student timely appealed the Local Board's decision to the State Board.

II. STANDARD OF REVIEW

A review of a student disciplinary decision by the State Board "shall be confined to the record" and shall not be a *de novo* review. See O.C.G.A. § 20-2-1160(e).

The Georgia Supreme Court has provided the following standard of review for student disciplinary appeals:

On appeal of a student disciplinary decision, the [State Board] reviews whether the record supports the initial decision of the local school board. The [State Board] applies the any evidence standard of review to the local board's decision as to any factual issue. It is the role of the [fact finder] to weigh the evidence and determine the credibility of witnesses, and not the [State Board]. Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law... An abuse of discretion would be present if the local board misapplied the relevant law or if its rulings are not supported by the evidence. *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794 at 798 (2017) (adapted for the State Board and omitted citations of authority).

III. ISSUES ON APPEAL

A. Did the Student Abandon His Appeal?

State Board of Education Rule 160-I-3.04(4)(g) states that "[t]he party requesting the appeal shall file a brief with the state board discussing the party's position within 20 days of the date of docketing. The opposing party shall have 40 days from the date of docketing to file a brief."

The Local Board contends the Student's appeal should be dismissed because the Student did not file a brief with the State Board in accordance with State Board Rule 160-I-3.04(4)(g). See *Chris M. v. McIntosh Cnty. Bd. of Educ.*, Case No. 1995-47 (Ga. SBE, Jan. 1996). However, in *D.O. v. Henry Cnty. Bd. of Educ.*, Case No. 2015-33 (Ga. SBE, Jun. 2015), the State Board noted that a student who sets forth his argument challenging the local board's decision in his initial appeal and then participates in oral argument, has not abandoned his appeal. See also, *C.T. v. Columbia Cnty. Bd. of Educ.*, Case No. 2014-46 (Ga. SBE, Sep. 2014) citing *S.D. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2012-71 (Ga. SBE, Oct. 2012).

Additionally, O.C.G.A. § 20-2-1160(b) provides that:

“Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of....”

The record shows that although the Student did not file a formal brief with the State Board, the Student’s initial appeal letter was transmitted to the State Board by the Local Board. In his appeal letter, the Student disputes the Local Board’s determination that the School met its burden of proof. Moreover, in its brief, the Local Board acknowledges that the Student’s letter contains a general challenge to the sufficiency of the School’s evidence. Consequently, the State Board finds that the Student’s appeal letter sufficiently sets forth the questions in dispute and the reasons for the complaint, thus satisfying the essential elements of a brief, or written appeal, as identified in O.C.G.A. § 20-2-1160(b). In addition to the presence of the appeal letter, the student requested and participated in oral argument. See *D.T. v. Richmond Cnty. Bd. of Educ.*, Case No. 2015-27 (Ga. SBE, May 2015). For these reasons, the State Board finds that the Student did not abandon his appeal even though he did not file a formal brief. The Local Board’s motion to dismiss the Student’s appeal is denied.

B. Did the Local Board Meet Its Burden of Proof Showing the Student Violated Local Board Rule 23C Sexual Assault or Battery?

The Local Board argues that the Student violated Rule 23C Sexual Assault or Battery, which states:

Students will not engage in any indecent behavior including, but not limited to rape, statutory rape, fondling, child molestation, sodomy, making physical contact with the intimate parts of the body of another without that person’s consent or other offenses outlined within Georgia code, Chapter 16 [sic], Title 6 [sic].

Rule 23 also “prohibits sexual conduct between or among students and between or among a student and School District employees or visitors on school property or at any school activity or event...” *DeKalb County School District Code of Student Conduct 2021-2022*, p. 46. Rule 23 regulates a broad spectrum of sexual misconduct on campus. In this case, the record is undisputed that the sexual contact between the Student and the female student occurred in the middle of the night off-campus – not on school property or at a school event or activity. Therefore, the State Board finds that the Local Board did not meet its burden of proof regarding Rule 23C Sexual Assault or Battery.

C. Did the Local Board Meet Its Burden of Proof Showing the Student Violated Local Board Rule 17A Off-Campus Misconduct?

The Local Board’s Rule 17A Off-Campus Misconduct states:

Students will not engage in any off-campus behavior that could result in the student being criminally charged with a felony (or punishable as a felony if committed by an adult) and which makes the student’s continued presence at school a potential

danger to persons or property at the school or which disrupts the educational process.

The Student contends that the School failed to meet its burden of proof at the disciplinary hearing. The Student insists that there was no evidence presented of sexual assault or battery, so that there was no violation of the Local Board's policy. For a local board to punish a student for off-campus misconduct, the State Board has consistently required the local board to show 1) that the student engaged in conduct that could be punishable as a felony and 2) that the student's continued presence at the school would either pose a danger to persons or property or be disruptive to the educational environment. See *W.J.E. v. Griffin-Spalding Cnty. Bd. of Educ.*, Case No. 1996-7 (Ga. SBE, May 1996) (finding "that there was no evidence presented that the Student's presence in school endangered other students or staff or caused, or was likely to cause, any disruption to the educational climate.") and *T.B. v. Houston Cnty. Bd. of Educ.*, Case No. 1994-6 (Ga. SBE, Apr. 1994) (reversing the local board of education for failure to show "that the alleged crime resulted in any disruption to the control and management of the school."). See also *K.P. v. Bibb Cnty. Bd. of Educ.*, Case No. 2008-24 and *P.P. v. Bibb Cnty. Bd. of Educ.*, Case No. 2008-25 (Ga. SBE, Feb. 2008) (addressing an off-campus assault and affirming the decision to expel the two students because there was evidence "that the news of the fight disrupted the schools the following week as students and parents were fearful of retaliatory actions."); *S.B. v. Henry Cnty. Bd. of Educ.*, Case No. 2018-12 (Ga. SBE, Feb. 2018).

The Local Board argues that sufficient evidence was presented at the disciplinary hearing to prove that the Student sexually assaulted the female student. To determine whether the Student violated Rule 17A – Off-Campus Misconduct, the Local Board must present evidence that that the Student committed an offense that could be punishable as a felony and then must prove that the Student's continued presence would pose a danger to persons or property or would cause a disruption to the educational environment. A careful review of the record shows that the Local Board failed to offer testimony or evidence of any felony for which the Student could have been charged. Furthermore, the Local Board failed to offer testimony or evidence that the Student's continued presence at the School posed a danger to persons or property or a disruption to the educational environment.

After careful consideration of the record evidence and the Local Board's policy, the State Board finds that the Local Board has failed to put forth any evidence proving that the Student violated Rule 17A Off-Campus Misconduct. The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See *Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783 (1978); *Antone v. Greene Cnty. Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). In this case, the record contains no evidence proving that the Student violated the Local Board's policy.

IV. CONCLUSION

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board failed to offer any evidence that the Student violated the Local Board's policy. Therefore, the decision of the Local Board is **REVERSED**.

This 29th day of September, 2022.

LEONTE BENTON
VICE CHAIR FOR APPEALS