

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KELLEY BRISENDINE, :
 :
 Appellant, :
 :
 vs. : CASE NO. 1978-36
 :
 HENRY COUNTY BOARD OF :
 EDUCATION, :
 :
 Appellee :

O R D E R

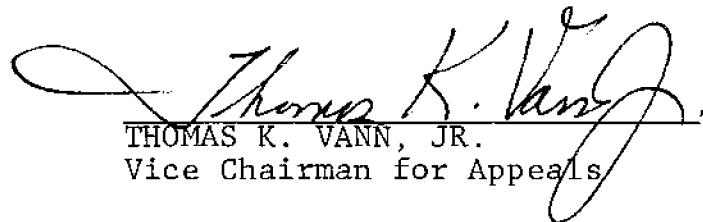
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Henry County Board of Education herein appealed from, is hereby affirmed.

Mr. McClung and Mrs. Huseman were not present.

This 8th day of February, 1979.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| Appellee. | : | |

PART I

SUMMARY OF APPEAL

This is an appeal by Kelley Brisendine (hereinafter "Appellant") from a decision by the Henry County Board of Education to suspend her from regular classroom participation for the remainder of the 1978-79 school term and placed in a night course program because of her use of marijuana. The appeal asserts that there was no probative evidence that she was using or smoking marijuana. Appellant's counsel also made an oral motion to exclude certain evidence contained in the record which was received after the hearing before the Local Board. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II

FINDINGS OF FACT

The Local Board did not make any findings of fact. The record shows that on October 26, 1978, the principal of the high school was notified that there were some girls smoking marijuana in the restroom. The principal confronted the girls and asked them if they had been smoking. Appellant was the first to respond and she admitted that she had been smoking marijuana. While Appellant was in the principal's office, the assistant principal brought in a pocketbook that had been found in a trash can. While he was attempting to locate a name and address, the assistant principal discovered a marijuana cigarette in the pocketbook. Appellant admitted that the pocketbook was hers.

Based upon his investigation, the principal imposed a five-day suspension, notified the parents in writing, and asked for a hearing by the Student Disciplinary Committee. Appellant was notified of her rights to present witnesses, cross-examine witnesses, and to have an attorney present. The Committee convened a hearing on October 30, 1978. After hearing the evidence, the Committee recommended that Appellant be suspended for the remainder of the school term and placed in an in-house suspension program. Appellant thereafter appealed and asked for a hearing before the Local Board.

Appellant was notified in a letter dated October 30, 1978 that the hearing before the Local Board would be held on November 13, 1978 and that Appellant had the right to be represented by counsel.

The hearing was held before the Local Board on November 13, 1978. At the hearing, Appellant denied that she had been smoking marijuana. She admitted that she had told the principal she was smoking because she "didn't know what else to do." She also admitted that the cigarette in the pocketbook was hers. During the hearing, Appellant was not represented by counsel.

PART III

CONCLUSIONS OF LAW

Appellant has appealed to the State Board of Education on the grounds that the Local Board failed to prove that she was either using or in possession of marijuana and that the only evidence supporting the charges was the uncollaborated testimony of the principal that Appellant admitted she had been smoking. Appellant then points out that during the hearing she denied that she either used or possessed any marijuana.

If there is any evidence to support the decision of the local board, then the State Board of Education cannot disturb the decision of the local board. Ransum v.

Chattooga County Board of Education, 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Board of Education, Case No. 1976-11. In the instant case, Appellant admitted during the hearing that she had told the principal that she had been using marijuana on the school campus when she was confronted by the principal. Although at the hearing she denied using marijuana and attempted to explain away her prior confession as the result of confusion and fear, the Local Board, as the trier of fact, was in a position to determine the credibility of the witnesses and could decide that Appellant had been using marijuana on the school campus.

Appellant also argues that she was not granted due process because she did not have sufficient time before the hearing to secure the services of an attorney and therefore was not represented at the hearing. The record, however, shows that Appellant, and her parents, were notified that she had the right to be represented by counsel at the hearing. It therefore appears that the Local Board performed all that was necessary in order to insure that Appellant's due process rights were preserved.

PART IV

RECOMMENDATION

Based on the foregoing findings and conclusions, the record submitted, and the briefs and arguments of

counsel, it is the opinion of the Hearing Officer that Appellant's motion to exclude evidence received by the Local Board after the hearing should be denied because it represents harmless error in view of the competent evidence presented at the hearing. The Hearing Officer is also of the opinion that the Local Board afforded Appellant all of her due process rights and properly met its burden of establishing that Appellant had been using marijuana.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer