STATE BOARD OF EDUCATION

STATE OF GEORGIA

VICKI WILSON, Appellant, vs. COOK COUNTY BOARD OF EDUCATION, Appellee	:	CASE NO. 1979-8

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 Cook County Board of Education herein appealed from is hereby affirmed.

This 11th day of October, 1979.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

OCT 5 1979

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VICKI WILSON Appellant, vs. COOK COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1979-8 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

Vicki Wilson (hereinafter "Appellant") has appealed the Cook County Board of Education (hereinafter "Local Board") decision to expel her for the remainder of the school year and to place her on probation for one year because it found her to be in possession of illegal drugs. Appellant bases the appeal on the grounds that there was no competent evidence that she was in possession of any drugs; the Local Board erred in not continuing the hearing because two witnesses for Appellant did not respond to the subpoena issued by the Local Board and due process was denied by continuing the hearing without the presence of the two witnesses. The Local Board has made a motion to dismiss that portion of the appeal concerning the expulsion for the remainder of the year because the

school term in which Appellant was expelled has been completed. The Local Board also urges that the absence of the two witnesses was not error in that there was sufficient evidence to establish drug possession by Appellant and the evidence to be given by the two witnesses was given by another witness. The Hearing Officer recommends that the decision of the Local Board be upheld.

PART II

FINDINGS OF FACT

On April 26, 1979, the local superintendent sent a letter to Appellant's parents informing them that Appellant was charged with violation of a Local Board policy prohibiting possession of illegal drugs. The letter indicated that a hearing would be held on April 30, 1979. The letter also listed the witnesses who would testify on behalf of the school system and informed the parents and Appellant that an attorney could represent Appellant. The hearing was held as scheduled and the Local Board made an unanimous decision on the same night to suspend Appellant for the remainder of the year and to place her on probation for one year. The Local Board did not make any findings of fact to accompany its decision. A written notice of the decision was given to Appellant's

parents the next day. The appeal was filed with the local superintendent on May 15, 1979.

The evidence presented at the hearing shows that Appellant was an eighth grade student. She worked in the house of a pharmacist after school where there were a number of drugs and medicines readily available. Two other students, who were brothers, testified that Appellant gave them pills, which they identified as valium, while they were riding to school on the school bus. Another student testified that Appellant told her on the telephone that one brother was going to sell pills she had given to him and that she would get two dollars for each pill sold. Another student testified that she saw Appellant give something to one of the brothers while they were riding the bus. When she asked the boy what Appellant had given him, she was informed that it was valium.

One of the brothers testified that he gave the pills away in the junior high school and did not make any sales. A student who was given some of the pills took four of them and was hospitalized as a result.

Appellant and her parents testified that the two brothers came to the house where Appellant was working and stole the pills. A first taking took place without Appellant's knowledge, but a second taking took place which Appellant discovered. When she made the discovery, she went in search of the brother in an attempt to recover

the pills. The parents discussed the theft with the owner of the house that night.

The two brothers identified the pills they received as yellow pills with the number "5" written on them and the word "valium". The pharmacist identified valium pills as being yellow in color with the letter "5" written on them.

PART III

CONCLUSIONS OF LAW

The appeal, which lists several grounds, rests primarily on the assertion that there was insufficient evidence to justify the Local Board's decision, and the Appellant was denied due process because two subpoened students were not made available for examination. In support of the insufficient evidence ground, Appellant states that there was not any evidence Appellant ever had possession of the pills, there was not any competent evidence the pills in question were in fact valium pills, and there was not any direct evidence Appellant gave any of the pills to the two brothers.

As outlined in the findings of fact, there was testimony from which the Local Board could have decided that Appellant had access to the drugs, had given the drugs to other students, and that the drugs were valium.

There was conflicting testimony, and, if the two subpoened students had testified, there may have been further conflicting testimony. The testimony of the parents indicates that Appellant was chasing one of the brothers in an attempt to recover the drugs. Appellant told her parents about the missing drugs before it was ever disclosed that any drugs were missing. The fact of the missing drugs was immediately reported to Appellant's employer. All of this evidence could have been given considerable weight by the Local Board and the Local Board could have determined that Appellant's version of the facts was correct. There was, however, the conflicting evidence which the Local Board could choose to accept as the correct version of what actually happened. The State Board of Education follows the rule that if there is any evidence to support the decision of the local board, then that decision will not be disturbed upon review. Antone v. Greene County Board of Education, Case No. 1976-11. Since there was evidence before the Local Board from which it could decide that Appellant had obtained the drugs, that the drugs were valium, and that she gave them to other students on the bus, the decision will not be disturbed.

The appeal also complains that there was a denial of due process because two students who were subpoened were not made to appear. The Local Board argues

that it did not have the power to make the students appear, but that their failure to appear was harmless error in that the evidence they would have been presented was given by Appellant. Appellant argues that the Local Board could have continued the proceeding when the motion was properly made, and failure of the Board to continue the hearing and make an effort to enforce the subpoenas through the superior court denied Appellant due process.

Ga. Code Ann. §81-1410 provides that when a motion for continuance is made because of a missing witness, it is necessary to show that the testimony of the witness is material, that the moving party expects to be able to procure the testimony of the witness, and the facts that will be proved by the absent witness. The record shows that Appellant was aware the two witnesses had refused to testify before the hearing began, but no action was taken to procure their attendance. Additionally, there was no showing made of what was the expected testimony of the witnesses. The Hearing Officer concludes that the Local Board did not abuse its discretion by proceeding with the hearing.

PART IV

RECOMMENDATION

Based upon the findings and conclusions herein, the record submitted, and the briefs and arguments of

counsel, the Hearing Officer is of the opinion that the issue of Appellant's suspension is moot and that the Local Board had the power and authority, and the evidence before it, to place Appellant on probation for one year. The Hearing Officer, therefore, recommends that the decision of the Cook County Board of Education be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer