

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KELVIN G.,)
Appellant,)
v.) CASE NO. 1985-46
DEKALB COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

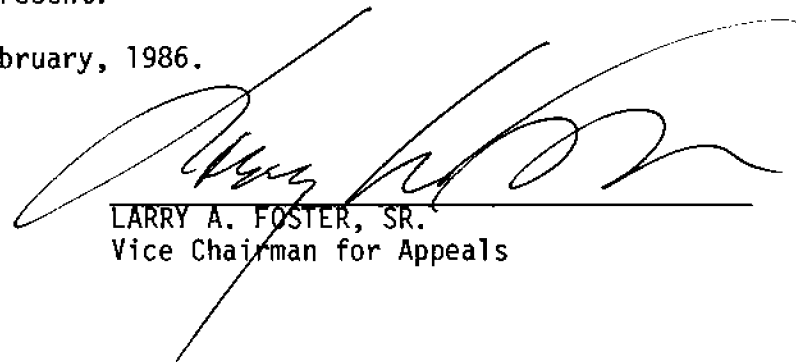
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 DeKalb County Board of Education herein appealed from is hereby sustained.

Mr. Owens was not present.

This 13th day of February, 1986.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KELVIN G.,)	
)	
Appellant,)	
)	CASE NO. 1985-46
v.)	
)	
DEKALB COUNTY BOARD)	
OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by the parents of Kelvin G. (hereinafter "Student") from a decision of the DeKalb County Board of Education (hereinafter "Local Board") expelling the Student for possession of cocaine on school grounds. The Student contends on appeal that the decision of the Local Board should be reversed because the hearing panel provided to the Student at the local level was defective, the Student and his parents were surprised by the evidence, the school refused to provide the identity of an informant, and the punishment was excessive, unreasonable, or discriminatory.

PART II

FACTUAL BACKGROUND

The Student is a fourteen year old male who has no history of discipline problems prior to the incident involved in this case. Toward the end of the school day on September 19, 1985,

the campus supervisor informed the assistant principal that the Student was reported to have cocaine in his possession. Because the school day was almost over, the assistant principal decided to wait until the next day to take action regarding the report. The campus supervisor brought the Student to the assistant principal the next morning. Upon questioning, the Student produced two packages of a white powdery substance. The police were called and, on preliminary testing, identified the substance as cocaine.

The Student was suspended and given notice that a hearing would be held regarding the charge of possession of drugs or substances thought to be drugs.

A Student Evidentiary Hearing Committee held a hearing at which the Student contended that the substance was really crushed Tylenol®, that he was just playing a joke on other students, and the only possible way the substance could have been cocaine would have been through accidental contamination. The Student Evidentiary Hearing Committee permanently expelled the Student from the school system.

Subsequently, upon the parents' request, the Disciplinary Action Review Committee then reviewed the case and voted to uphold the Student Evidentiary Hearing Committee decision.

The parents appealed the decision of the Disciplinary Action Review Committee to the Local Board. The Local Board reviewed the record and voted to uphold the decision of the

Student Evidentiary Hearing Committee for permanent expulsion. The Local Board did provide that the Student could apply to the Local Board for a reconsideration for readmittance to the alternative school if the Student applied a minium of thirty (30) days before the beginning of spring quarter and showed some evidence as to why he should be readmitted.

It is from this decision the parents appealed.

PART III

DISCUSSION

The Student first contends on appeal that the composition of the hearing panel which the Local Board provided him was defective under the rules of the Local Board. There was no objection to the composition of the hearing panel at the hearing before the panel. The objection was raised before the Local Board, but there was no evidence presented to support the Student's position that the panel was improperly constituted. In the briefs filed by the parties, it is argued the Local Board had a requirement that the hearing panel be composed of a building level administrator, a hearing officer, a psychologist, a social worker, and a special educator, while the actual hearing panel was composed of a social worker who worked in Student Relations and Special Services (and who served as the hearing officer), a social worker who worked at the Psychoeducational Center, a psychologist, an elementary school administrator, and a secondary school administrator.

Even if the Student were allowed to raise this issue without actual proof of the defective condition of the panel, the Student still has not set forth any reason why such defect would warrant reversal. The defect in the panel has not been shown to have caused any harm to the Student. Additionally, the Local Board met or exceeded State and Federal due process requirements and a violation of a local board's own rules does not necessarily amount to a due process violation. Jaska v. Regents of the University of Michigan, 597 F. Supp. 1245 (1984) U.S.D.C. E.D. Mich., S.D.)

The Student's second contention on appeal is related to the fact that a Georgia Bureau of Investigation (hereinafter "GBI") Crime Lab report identifying the substance as cocaine was presented to the parents just as they walked into the hearing and, thus, the Student did not have an adequate opportunity to defend himself. Additionally, the Student contends the report did not adequately show the minute amount of cocaine the Student claims would have been present.

The fact that the GBI Crime Lab Report was presented to the parents only as they entered the hearing does not, under the facts of this case, warrant reversal. The Student and the Student's parents were aware that the substance was believed to be cocaine as it had previously been tested and identified as cocaine by a DeKalb County Police Officer. The Student

did not request an independent test nor did he request additional time at the hearing to dispute the GBI report. The evidence presented established the substance to contain cocaine, which should have been no surprise to the Student as that is what he was charged with, and if the Student wished to mitigate the possession charge by showing that the amount was small, he should have requested his own test on the substance.

The Student's third contention on appeal is that he was denied due process because he was not given the identity of the person who informed the campus supervisor that the Student had cocaine in his possession. He contends that this denied him his right to cross-examine the witnesses against him and that statements made that the informer had stated the Student had attempted to distribute the cocaine prejudiced the hearing committee.

The Student had no right to know the identity of the informer and, since the informer did not testify, the Student had no right to cross-examine him. The fact that the Student is entitled to a hearing does not mean that he is entitled to all of the procedures and rights guaranteed in a criminal proceeding. The Student confirmed that he possessed the substance. Additionally, hearsay is admissible in such a proceeding. Boykins v. Fairfield Board of Education, 492 F.2d 697 (5th Circuit 1974).

The Student's final contention on appeal is that his equal protection rights were violated because the punishment of expulsion was excessive, unreasonable and discriminatory. It is his position that, because less drastic measures could have been imposed, they should have been tried first and the harsh punishment of expulsion should not have been imposed on the first offense.

While it is true that expulsion is a harsh punishment, the fact that the Local Board chose to use it as the punishment in this instance does not violate the Student's rights to equal protection. The expulsion of the Student does tend to further the Local Board's objective, to prevent drug abuse in the schools. As long as the Local Board has a rational reason for its actions, it is entitled to exercise its discretion in managing the schools. In the present case, the Local Board clearly has the authority to expel the Student.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Student was not denied due process nor equal protection under the laws of the State of Georgia, nor the Constitution of the United States. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.



L. O. BUCKLAND
STATE HEARING OFFICER