

STATE BOARD OF EDUCATION

STATE OF GEOR3IA

CHRIS V.,)	
)	
Appellant,)	
)	
v.)	CASE NO. 1986-13
)	
DEKALB COUNTY)	
BOARD OF EDUCATION,)	
)	
Appellee.)	

ORDER

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 the State Board of Education and by reference are incorporated

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

Mrs. Jasper and Mr. Carrell were not present.

This 12th day of June, 1986.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

Student was notified, through his parents, that the charge could lead to suspension or possible expulsion. An administrative hearing was held in which the Student received a 10—day suspension. The parents were then notified that he would be required to appear before the Student Evidentiary Hearing Committee and that he could be represented by counsel, subpoena witnesses and cross-examine witnesses. The Student Evidentiary Hearing Committee heard the matter on February 12, 1986, and issued a decision to expel the Student for the remainder of the year, giving the Student the option of attending the alternative school, and placed the Student on probation for the 1986-87 school year. The Student appealed that decision to the Local Board on March 4, 1986. In the Student's appeal to the Local Board, the Student asserted the same arguments which he now asserts on appeal to the State Board of Education.

The Local Board reviewed the case on March 10, 1986 and voted to sustain the decision of the Student Evidentiary Hearing Committee by expelling the Student for the remainder of the 1985—86 school year with the option to attend the alternative school and reduced the probationary period ordered by the Student Evidentiary Hearing Committee to the fall quarter of the 1986-87 school year. This appeal was filed April 7, 1986.

PART III

DISCUSSION

The Student's first contention on appeal is that improper evidence was admitted at the hearing and that proper evidence does not support the decision of the Local Board. The Assistant Principal testified at the hearing that he was told the Student suggested his classmates take the Primatene as opposed to the Student's contention that his classmates requested the Primatene tablets. The Student contends this testimony constitutes hearsay and is inadmissible. The Student contends that the only testimony properly before the Local Board was the Student's own testimony that the other boys asked him for the medication and his own confession cannot

be the basis for a conviction without some corroboration under Georgia law (O.C.G.A. § 24-3-53).

The State Board of Education is bound to affirm the decision of the Local Board if there is any evidence to support that decision. See, Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11. In the present case, such evidence does exist. The Assistant Principal testified the Student admitted disbursing the Primatene pills to his classmates. He also testified the Student's classmates admitted having received the pills. The Student testified that he gave three of his classmates the pills. The Student's argument as to whether his classmates requested the pills or whether the Student offered the pills is irrelevant as to whether there is any evidence to support a finding that the Student violated school rules against distribution of any drugs, including over-the-counter drugs. The testimony of the Assistant Principal that the Student's classmates admitted having received the pills from the Student is, as is argued by the Student, hearsay. However, the Student never once denied that he gave the pills to the Students. Both during the Assistant Principal's investigation and at the hearing, the Student freely admitted he gave the pills to his classmates. The Student's attorney argues the hearsay testimony of the Assistant Principal is not evidence because even in an administrative proceeding, the Georgia Court of Appeals has ruled hearsay testimony was not admissible. Finch v. Caldwell, 155 Ga. App. 813 (1980). However, the Administrative procedures Act applied in that case is inapplicable under

O.C.G.A. § 20-2-1160. Hood v. Rice, 120 Ga. App. 691 (1969). Hearsay statements have been ruled admissible in the federal courts. Boykins v. Fairfield Board of Education, 492 F.2d 697 (5th Cir. 1974). The Hearing Officer is unaware and neither party has cited any decisions in this state which have ruled hearsay either admissible or inadmissible in a school disciplinary proceeding. While there might be a case where a hearsay statement alone would not sustain a decision, in an instance such as this where there was no question that the Student did commit the

act of giving pills to his classmates, and the Student did not deny doing so, the Hearing Officer is of the opinion the hearsay testimony is admissible. Additionally, the Hearing Officer is of the opinion O.C.G.A. § 24-3-53 which provides a confession cannot be the basis for a conviction without some corroboration does not apply to a school disciplinary proceeding. That section, using the term “conviction”, concerns itself with criminal proceedings. School disciplinary proceedings are not subject to the same requirements as criminal proceedings. If a student chooses to admit his actions at a hearing, there is no need for the school officials to provide corroborative evidence to prove the student committed the act the student admits he committed.

The Student’s final evidentiary contention is that the school administration, acting as prosecutor, made inflammatory statements regarding the potentially harmful effect of Primatene and that this prejudiced his case. The statements, although improper, do not warrant reversal of the Local Board’s decision. The Local Board had the opportunity to read the affidavits and brief of the Student contradicting the school administration’s assertions and, thus, were given the opportunity to refute the statements. Additionally, no objection was made to those assertions at the hearing.

Appellant’s second contention on appeal, that the Student was denied due process because he was inadequately informed of the charges and the possible penalties, also does not support reversal of the Local Board’s decision. The Student had received the Student Handbook at the beginning of the school year and was present when a teacher went over the school rules. The school rules prohibit possession and or distribution of all drugs whether over the counter or illegal and provide for penalties up to and including expulsion. The Student was notified that he was charged with dispensing drugs (Primatene) to other students as if it were a street drug. The charge clearly notified the Student of the acts with which he was being charged. The Student was previously made aware of the school rules. The notice given the Student was not defective.

The Student's third contention, that he was denied substantive due process because the punishment was too harsh, also does not warrant reversal of the decision of the Local Board. The punishment given the Student was indeed harsh, but it was related to a legitimate purpose of the Local Board, controlling and preventing drug consumption in public school. The State Board of Education is not allowed to substitute its judgment for that of the Local Board in determining the punishment the Student should receive. For the State Board of Education to determine the punishment given the Student violates substantive due process, the State Board of Education would have to determine that there was no rational reason for the punishment or that the punishment was so severe when compared to the offense it was shocking. In the present case, the Student was allowed to attend the alternative school and will be on probation for the first quarter the next school year. Such a punishment does not violate the Student's substantive due process rights.

The Student's final contention is that the disciplinary rules and regulations are overbroad and violate due process on their face and as applied. He contends that the attempt to regulate both legal and illegal drugs is defective and that the rules and regulations fail to state with particularity the notice and hearing procedures of the disciplinary process. It is his position the rules and regulations are defective because the disciplinary booklet does not set out the rules of evidence nor the rights of the parties and because the Student is not informed he receives only one de novo review.

The disciplinary rules and regulations are not overbroad or violative of due process either on their face or as applied. The Local Board is not required to set forth its rules and regulations with the particularity of a criminal code and the Student has not cited any right to more than one de novo review. The Student was notified of his right to an attorney and chose not to exercise that right in the first hearing. The Student has not shown why the Local Board is, as he argues, precluded from regulating the use of legal drugs at school. The Local

Board has a legitimate interest in regulating legal drugs in that even legal drugs can be harmful and the use of legal drugs could make it harder for the school officials to detect when illegal drugs were being used. Finally, the Student has not presented any arguments as to the damage which the alleged denial of rights has caused. The Student clearly admitted the misconduct and was given the opportunity to present mitigating circumstances and commendations on his behalf. He has not shown that anything else could have been done on his behalf which would have given him the right to be free from the punishment imposed by the Local Board.

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 the decision of the Local Board was supported by the evidence and the Student's due process rights were not violated, and the decision of the Local Board was within its authority. The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.

L. O. BUCKLAND
Hearing Officer