

charges arose from some students who had walked with Appellant to the alternative school that morning. Appellant denied that he had smoked a marijuana cigarette and asked the assistant principal what he could do to counter the charges of the other students. Appellant also asked the assistant principal how he could take a drug test. The assistant principal responded by saying that Appellant should just rely on his denial, and that he (the assistant principal) did not know how to obtain a drug test. The assistant principal then told Appellant that nothing would be done because it was obvious he did not have any marijuana and he had denied smoking a marijuana cigarette.

The assistant principal then testified that he called in three students who had been with Appellant at the alternative school. The assistant principal obtained written statements from the three students. All three students claimed they had observed Appellant smoke a marijuana cigarette. One other student was interviewed by the assistant principal, but the student said that he had not seen Appellant smoke anything.

Appellant testified that he had not smoked any marijuana and had never used any drugs. He also testified that he had had a fight with one of the students who had given a statement against him. Appellant's mother testified that she had never detected any marijuana, and that there were continuous disputes between Appellant and the students who gave statements against him.

The Local Board decided to continue the hearing to January 30, 1989 to obtain the testimony of the students who had provided statements against Appellant. Appellant was represented by an attorney when the hearing was reconvened.

During the second day of the hearing, two of the students who had given statements appeared and testified. Each of them testified that Appellant had smoked marijuana cigarette when a group of them had walked to the alternative school on the morning of January 11, 1989. They also testified that they had refused to smoke when Appellant offered them a cigarette.

Appellant took a drug test on January 25, 1989, and the results of the test were negative for the presence of marijuana. The Local Board permitted the test report to be introduced into evidence.

At the conclusion of the hearing, the Local Board first decided that Appellant was guilty of smoking a marijuana cigarette, and then decided to expel him for the remainder of the the 1988-1989 school year.

Appellant received a report from the drug testing laboratory that showed that traces of marijuana were detectable from one to three weeks. Based upon this report, Appellant requested the Local Board to reconsider its decision. The Local Board refused to reconsider and Appellant filed this appeal with the State Board of Education.

PART III

DISCUSSION

Appellant makes four basic claims on appeal, the first of which is that there was insufficient evidence to support a finding that he possessed or used marijuana at school. Appellant points out that the assistant principal did not find any evidence of marijuana and did not detect any odor of marijuana. In addition, Appellant points to the fact that he offered to take a drug test when he was questioned by the assistant principal, and a urine drug test administered two weeks after the reported incident did not disclose any evidence of marijuana usage. The only evidence presented was the uncorroborated testimony of two other students, whose testimony Appellant claims is suspect because he has fought with them in the past. The Local Board claims that the testimony of the two students is sufficient evidence upon which it could make its decision. Additionally, the Local Board maintains that the drug test is inconclusive because it was administered two weeks after the reported incident and traces of marijuana can disappear within one week.

The decision of a local board of education will not be disturbed on appeal if there is any evidence to support the decision. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., St. Bd. of Educ. Case No. 1976—11. In the instant case, the eye witness accounts of the two other students was evidence upon which the Local Board could rely. The fact that the Student had previously been involved in some disputes with the two other students would affect their credibility before the Local Board, but their testimony, nevertheless, was evidence that was before the Local Board. The State Board of Education, therefore, concludes that there was some evidence before the Local Board upon which it could base its decision.

Appellant advocates that the State Board of Education should adopt a standard different from the any evidence rule as its standard for review of student discipline cases. The any evidence rule, however, has been the standard established by the courts, see, Ransum, supra, and has been consistently applied by the State Board of Education. The State Board of Education, therefore, declines to apply a different standard.

Appellant's second contention on appeal is that the proceedings before the Local Board were procedurally defective because the notice of the hearing failed to state the names of the students who claimed they had witnessed the marijuana use, and prejudicial hearsay evidence was admitted. In addition, Appellant claims that error was committed by allowing presentation of prejudicial evidence about his absences from school and the questioning by Local Board members about his academic performance. Finally, Appellant maintains that error was committed because evidence favorable to his case, in the form of testimony from students that claimed Appellant had not used marijuana, was suppressed.

The Local Board responds by pointing out that administrative hearings involving the discipline of students do not follow the stringent requirements of criminal proceedings. See, Nash v. Auburn University, 812 F.2d 655, 664 (11th Cir., 1987). As a result, it does not violate a student's due process rights if the names of student witnesses are not revealed, or cross—

examination is not possible. See, Newsome v. Batavia Local School District, 842 F.2d 920 (6th Cir., 1988). Additionally, hearsay evidence is permissible in student discipline hearings. See, Chris V. v. DeKalb Cnty. Bd. of Educ., St. Bd. of Ed. Case No. 1986-13.

In this case, Appellant was aware of the students he was walking with on the day of the incident; the names were disclosed in the first hearing and there was time to obtain the attendance of the students at the second hearing, and Appellant had an opportunity to cross-examine the witnesses who appeared before the Local Board. The State Board of Education has recognized the rules cited by the Local Board in reviewing cases of student discipline. The State Board of Education, therefore, concludes that the Local Board did not deny Appellant any procedural due process rights.

Appellant's third contention on appeal is that the Local Board denied him substantive due process by expelling him from school for the remainder of the school year. Appellant contends that the decision was not based on substantial evidence and, therefore, constitutes an unreasonable, arbitrary, and capricious action. Appellant's fourth and final contention is that the punishment imposed by the Local Board was excessive.

As previously discussed, there was evidence, under the any evidence rule, to support the Local Board's finding that Appellant had used marijuana on campus. The degree of weight, and the resulting consequence, to be attached to the quality and quantity of the evidence was within the province of the Local Board as the trier of fact. Local boards of education have the power and authority to expel students, and the State Board of Education cannot substitute its judgment for the judgment of the local board. See, George H. v. Fulton Cnty Bd. of Educ., St. Bd. of Educ. Case No. 1987-3. Although the merits of expulsion as the proper response to the need for discipline can be argued, it is a permissible response by local school systems in an effort to maintain a drug-free environment in the schools. The State Board of Education, therefore, concludes that the decision of the Local Board was not unreasonable, arbitrary, or capricious, nor can it be deemed excessive.

PART IV

DECISION

Based upon the foregoing, the record submitted, and the briefs and arguments of counsel, the State Board of Education is of the opinion that the decision of the Local Board is supported by some evidence, and the decision cannot be deemed to be unreasonable, arbitrary, capricious, or excessive. The decision of the Local Board, therefore, is

SUSTAINED.

This 8th day of June, 1989.

John M. Taylor
Vice Chairman For Appeals