

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. L. B., S. M. C., D. M. H., A. B. H., :
T. P., J. C. S., and M. A. K., :
 :
Appellant, :
 : **CASE NO. 2000-08**
vs. :
 :
BRYAN COUNTY :
BOARD OF EDUCATION, : **DECISION**
 :
Appellee. :

This is the combined appeal of seven students, J. L. B., S. M. C., D. M. H., A. B. H., T. P., J. C. S., and M. A. K. (Students) from a decision by the Bryan County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend them for the remainder of the 1999-2000 school year, with the option of attending an alternative school, after finding them guilty of being under the influence of alcohol on school property. The Students claim that they were deprived of due process, the evidence did not support the charges, and the decision was arbitrary and capricious because it was too harsh. The Local Board's decision is sustained.

On November 12, 1999, the Students tested positive for alcohol consumption while they were at school for a football game. The Students were charged with violating the Local Board's policy that prohibits the possession of alcoholic beverages on school property. The policy provides for expulsion if violated.

The Students claim they were denied due process because they were unaware they could be expelled for being under the influence of alcohol while on school grounds. The record, however, does not support the Students' claim. The policy, which is contained in the student handbook that the Students received, lists expulsion as a consequence. The State Board of Education, therefore, concludes that the Local Board informed the Students and did not deny them due process.

The Students claim that the hearing officer erred by admitting hearsay evidence. The evidence, however, only explained the conduct of the administrators involved. The evidence was not prejudicial and did not serve as a basis for finding the Students guilty. The State Board of Education concludes that the hearing officer did not err in admitting the evidence.

The Students claim that the evidence did not support the finding that they were under the influence of alcohol. The Students make the claim because the principal, assistant principal, and the police officers who administered the alcohol detection tests did not record any of the test results and did not record the names of the students who tested positive. Even in the absence of a record of the test results, there was evidence to support the finding that the Students were under

the influence of alcohol at the school. The administrators segregated the Students when they tested positive. Because they were physically segregated from the students who tested negative, it was unnecessary to record the test results. The administrators and police officers testified that they could smell the odor of alcohol. The State Board of Education concludes that there was evidence to support the Local Board's decision.

The Students claim that the Local Board's decision was arbitrary and capricious because they otherwise had good disciplinary records and there was no indication of any need to remove them from the regular student population. Although the Students may not represent a threat to the regular student population, the Local Board has the authority to expel students who violate its policies against the use of alcoholic beverages. O.C.G.A. §§ 20-2-752, 20-2-755. The Students' previous disciplinary records do not prevent the Local Board from expelling them. *See, S. W. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1998-29 (Ga. SBE, Aug. 13, 1998). The State Board of Education, therefore, concludes that the Local Board's decision was not arbitrary and capricious.

The Students also claim that the Local Board erred by not considering mitigating circumstances. Specifically, the Students claim that the Local Board failed to consider their academic and disciplinary records. There is no evidence in the record to sustain the Students' assertion. Nevertheless, the Students argue that the Local Board's zero tolerance policy prevents individualized consideration of the circumstances, which violates the Local Board's policy that requires consideration of mitigating circumstances, prior disciplinary problems, and a student's scholastic record. If the Local Board decides that it wants its zero tolerance policy to have precedence over its policy of individualized consideration, then it has the authority to make such a determination. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. *See, Boney v. County Board of Education for Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); *Braceley v. Burke County Bd. of Ed.*, Case No. 1978-7." *Joseph M. v. Jasper Cnty. Bd. of Educ.*, Case No. 1981-40 (Ga. SBE, Feb. 11, 1982).

Based upon the foregoing, it is the opinion of the State Board of Education that the Students were not denied procedural or substantive due process, and the Local Board's decision was supported by the evidence and was not arbitrary or capricious. The Local Board's decision, therefore, is
SUSTAINED.

This _____ day of May 2000.

Bruce Jackson
Vice Chairman for Appeals