

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. J.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2000-16
	:	
WILKES COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by A. J. (Student) from a decision by the Wilkes County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from school for the remainder of the 1999-2000 school term after finding him guilty of repeated offenses. The Student claims that the evidence was based solely on hearsay testimony and that the punishment was too harsh for the conduct involved. The Local Board's decision is reversed.

The Student, an eighth grader, was charged with constant and willful disruption of the school campus and classroom after he was charged with "bullying" because he allegedly kicked another student in the back during an assembly. At the hearing before a student disciplinary tribunal, the only evidence provided was the hearsay testimony of the Student's principal. There was no evidence that the Student willfully kicked the other student. The student who was supposed to have been kicked did not lodge a complaint and did not appear as a witness. While hearsay evidence can be admitted in an administrative proceeding, it is without any probative value and cannot support an administrative decision without some other evidence. *See, McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994). Since there was no competent evidence to support the bullying charge, and the bullying charge served as the catalyst for the charges of constant and willful disruption, it follows that the tribunal did not have any evidence to support its decision that the Student was guilty of constant and willful disruption.

The Local Board argues that the Student's history of classroom disruption was sufficient to support the tribunal's decision that the Student was guilty of constant and willful disruption without the bullying charge. The Local Board's argument, however, fails because the charge of constant and willful disruption would not have been made but for the bullying charge. The entire premise of the charges against the Student was that he was guilty of the bullying charge.

The Local Board has a policy that prohibits a student from going to the alternative school more than once. During the hearing, the principal intimated to the tribunal that she had obtained a waiver for the Student from the Local Superintendent and the director of the alternative school and she recommended sending the Student to the alternative school. The tribunal followed the principal's recommendation and similarly recommended assignment to the alternative school.

The Local Superintendent and the director of the alternative school, however, refused to permit the Student to again attend the alternative school. Whether intentional or unintentional, if the principal had not misled the tribunal, the tribunal may have reached a different decision.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no competent evidence to support the charges against the Student. Accordingly, the Local Board's decision is hereby
REVERSED.

This _____ day of June 2000.

Bruce Jackson
Vice Chairman for Appeals