

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

T.K.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-25
	:	
BANKS COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by T.K. (“Student”) from a decision by the Banks County Board of Education (“Local Board”) expelling the Student from school until the end of the 2009-2010 school year, with the option to enroll in the alternative school. The Local Board took these actions because it found that the Student violated the Local Board’s Code of Conduct by possessing and using drugs, drug paraphernalia, and tobacco while at school. For the reasons set forth below, this appeal is sustained because the record contains evidence supporting the decision of the Local Board.

I. BACKGROUND

The Student attends Banks County High School. In May of 2009, a teacher entered a school restroom and heard another student say “peace out.” The teacher then heard the sound of a lighter clicking in the stall. The teacher entered the stall and found the Student attempting to light a pipe with a lighter. The Student was taken to the Assistant Principal’s office. The other student was questioned and told the Assistant Principal that the Student had a bag of marijuana in the restroom and that they smoked it. The Assistant Principal then searched the Student and found a small amount of marijuana in his wallet. The bag of marijuana and pipe were given to the School Resource Officer, who confirmed that the odor was consistent with marijuana. The School Resource Officer had the items tested by the Bank’s County Sheriff’s Office, which confirmed the substance was marijuana.

The Student wrote three statements regarding this incident. In all three statements, the Student admitted to bringing the pipe and lighter to school, and smoking it in the restroom. On May 19, 2009, the Local Board sent the Student a charge letter stating that he was being charged with the possession and use of drugs, drug paraphernalia, and tobacco. The charge letter included the Local Board’s policy regarding the relevant policy violations. The Student requested a hearing and the Local Board convened a hearing tribunal.

At the hearing, the Assistant Principal, Teacher, and School Resource Officer testified about the events supporting the charges against the Student. After hearing all the evidence, the hearing tribunal found that the Student violated the Code of Conduct for the possession and use of drugs, drug paraphernalia, and tobacco. The hearing tribunal recommended expelling the Student from school for the 2009-2010 school year, with the option to enroll in the alternative school. The Local Board affirmed the decision of the hearing tribunal.

II. ERROR ASSERTED ON APPEAL

A. Notice/Due Process.

The Student asserts several issues regarding the hearing process. Specifically, that he was not provided sufficient notice to prepare for the hearing, the charge letter was deficient, and he was not provided access to all witnesses. As an initial matter, none of these issues were raised before the tribunal and, therefore, these issues cannot be raised on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983).

Furthermore, none of these issues have merit. First, the Student contends that the charge letter was deficient. The Student relies upon Damon P. v. Cobb County Bd. of Educ., Case No. 1993-9 (Ga. SBE May 1993) in support of his position. However, Damon P. does not support the Student's appeal. In Damon P., this Board found that the local board failed to follow its own policies regarding the notice given to the Student, and the policy violation the student was charged with was not specifically identified.

In this case, the rule violation is specific – possession and use of drugs, drug paraphernalia, and tobacco. The notice specifically advised the Student that he was being charged with possessing and using drugs, drug paraphernalia, and tobacco while at school. The Student had been questioned about the incident and he provided three statements regarding the incident. Thus, the Student's assertion that he was not provided notice is without merit.

Second, the Student contends that he was not provided adequate notice to prepare before the hearing date. The Student relies on B.F. v. Evans County Bd. of Educ., Case No. 2007-63 (Ga. SBE Sept. 2007) in support of his position. However, B.F. does not support the Student's appeal. In B.F., the Student raised the notice deficiencies before the tribunal. Furthermore, in B.F., the notice was not delivered to the student before the hearing, and the notice only stated that the student violated the rules.

In this case, the Student was provided notice of the specific charge five (5) days prior to the hearing. The Student did not seek a continuance. The Student was provided sufficient notice before the hearing. See Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE Sept. 1988).

The Student further asserts that he was not provided access to all the witnesses, specifically the other student who was in the restroom with him. The Student appears to be contending that the Local Board was required to have this witness at the hearing.¹ However, “[a] school system . . . is not required to call any particular witnesses or to have them available for cross-examination.” A.A. v. Rockdale County Bd. of Educ., Case No. 2006-56 (Ga. SBE, May 2006); D.B. v. Gwinnett County Bd. of Educ., Case No. 2008-75 (Ga. SBE, Sept. 2008).

B. Conflicting Codes of Conduct.

The Student contends that the Local Board has conflicting Codes of Conduct. This assertion is without merit. The Local Board has a general policy stating that each school shall adopt a Code of Conduct. Banks High School has a specific policy that identifies the possession and use of drugs, drug paraphernalia, and tobacco as a violation of the Code of Conduct. The Student concedes that he read the High School’s Code of Conduct. The Local Board policy does not contradict this specific provision. Thus, this assertion is without merit.

C. Record Evidence.

The Student contends that the decision is not supported by the evidence. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student was charged with violating the Code of Conduct for possession and use of drugs, drug paraphernalia, and tobacco. The Student admitted to possessing the pipe and taking a hit of marijuana in the restroom. Moreover, the Assistant Principal, Teacher, and School Resource Officer all testified at the hearing. This testimony shows that the Teacher found the Student in the restroom with a pipe and lighter, the Assistant Principal found a bag of marijuana on the Student, and the School Resource Officer had the substance in the bag tested

¹ The Student also contends that the admission of the Student’s statement is hearsay. However, the Student did not raise a hearsay objection before the hearing tribunal, and it cannot be raised for the first time on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983). Moreover, as set forth below, the decision of the Local Board is supported by the evidence.

and confirmed it was marijuana. Thus, the record contains evidence supporting the decision of the Local Board.

D. Hearsay Evidence.

The Student asserts that the Local Board's decision should be reversed because it relied on the other student's testimony, which constitutes hearsay.² Hearsay evidence has no probative value and cannot be used to establish any fact in an administrative hearing. See McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 474 (1994). The Board agrees that the statement of the other student is inadmissible hearsay. It is an out-of-court statement made by a person that was unavailable for cross-examination. See L.S. v. Carrollton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007); McGahee, 214 Ga. App. at 474; O.C.G.A. § 24-3-1. However, as set forth above, the record contains admissible evidence supporting the decision of the Local Board. Thus, the admission of this statement was harmless error. M.H. v. Gwinnett County Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000).

E. Fair Hearing.

The Student contends that he was not provided a fair hearing because the hearing officer, at the beginning of the hearing, stated that the Student had admitted to being guilty. It appears that the hearing officer erroneously believed that the Student was only seeking a hearing on the punishment phase. The Student advised the hearing officer that he was contesting guilt, at which time the Student was provided a hearing. Based upon a review of the record, this Board fails to find any evidence suggesting that this one comment prejudiced the rights of the Student. Thus, this error is without merit.

F. Level of Punishment.

The Student asserts that the discipline he received is excessive. However, the notice issued to the Student stated discipline included punishment up to expulsion. "The State Board of Education . . . cannot adjust the level or degree of discipline imposed by a local board of education." B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 1998). Thus, this Board cannot alter the Student's discipline.

² The Student relies on Z.B. v. Bartow County Bd. of Educ., Case No. 2008-44 (Ga. SBE, May 2008) and L.S. v. Carrollton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007) in support of his position. However, in both of these cases, the local boards relied solely upon statements from other students to support its decision. Moreover, in L.S., the local board failed to test the substance found to confirm it was marijuana.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _____ day of January, 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS