STATE BOARD OF EDUCATION
STATE OF GEORGIA

T.O.,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO. 2010-39**
	:	
ATLANTA PUBLIC SCHOOLS BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by T.O. ("Student") from a decision by the Atlanta Public Schools Board of Education ("Local Board") suspending the Student from school for two weeks, placing him on probation for the remainder of the school year, and requiring him to attend the SUPER program. The Local Board took these actions because it found that the Student violated the Local Board's Code of Conduct by skipping class and possessing and drinking alcohol on the school campus. 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 Grady High School. On or about October 2, 2009, the Student (along with three other students) was charged with skipping class and possessing and drinking alcohol on school campus. The Local Board's charges were based on the report from a counselor that the Student (along with the three other students) was in the parking lot drinking beer. The counselor witnessed the Student drinking beer. The Local Board's charges were also based on an assistant principal's report that he approached the students, and he smelled alcohol on the breath of all the students. The Student denies that he was drinking. The other three students deny that the Student was drinking, but assert that he had just walked-up to the truck. The Student requested a hearing and the Local Board convened a hearing tribunal.

At the hearing, the counselor and assistant principal testified about the events supporting the charges against the Student. The Student testified and denied that he drank the beer. Rather, the Student testified that he had just walked-up to the truck when approached by the assistant principal. The other three students denied that the Student drank the beer. The assistant principal also testified that it is against policy for students to be in the parking lot during school hours without permission. At the hearing, the Student did not deny that he was in the parking lot without permission. After hearing all the evidence, the hearing tribunal found that the Student violated the Code of Conduct by skipping class and possessing and drinking alcohol. The hearing tribunal recommended suspending the Student from school for two weeks, placing him

on probation for the remainder of the school year, and requiring him to attend the SUPER program. The Local Board affirmed the decision of the hearing tribunal. The Superintendent stayed the suspension pending the appeal process.

II. ERROR ASSERTED ON APPEAL

A. Record Evidence.

The Student contends that the decision is not supported by the sufficiency and weight of 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 skipping class and possessing and drinking alcohol on the school campus. The Student does not appear to dispute that he was in the parking lot without permission. Rather, the Student challenges the Local Board's decision regarding the possession and drinking of alcohol. At the hearing, the Local Board offered the testimony of the counselor and assistant principal to support these charges. According to the counselor, he witnessed the Student drinking beer. The Student contends that this testimony is not credible because the counselor testified he was four to five feet from the students and the picture offered into evidence shows the location of the counselor to be forty to fifty yards away. In reviewing the record, this Board agrees that this evidence questions the credibility of the counselor. "However, the credibility of the witnesses is within the purview of the hearing tribunal." C.T. v. Camden County Bd. of Educ., Case No. 2010-30 (Ga. SBE, Jan. 2010). Furthermore, the record does not contain evidence to dispute that the assistant principal smelled alcohol on the Student's breath. This Board cannot make credibility determinations of the witnesses.

Furthermore, the Student contends that all three of the other students admitted to drinking but denied that the Student was drinking. Thus, the Student asserts that given this evidence coupled with the Student's denial that the Local Board erred by concluding the Student was drinking. The Student contends that the other students do not have an interest in admitting to drinking and denying that the Student did so. The Student's contention is very logical. Again, however, this is a credibility issue within the purview of the hearing tribunal. Thus, this Board must affirm the decision of the Local Board as the record contains admissible evidence supporting the decision of the Local Board.

In addition, the Student contends that hearsay testimony was offered by the assistant principal regarding statements made by the principal. 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).

Finally, the Student makes several arguments not made below and seeks for this Board to consider evidence which is not part of the record. This Board is bound by the record before the Local Board. Moreover, the State Board cannot consider arguments raised for the first time on appeal. 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, even considering the Student's contentions, the Local Board's decision is supported by admissible evidence.

B. Level of Punishment.

The Student does not appear to challenge that he was not authorized to be in the parking lot, i.e., that he was cutting class. The Student asserts that the discipline he received for this violation is excessive. As set forth above, the record supports all of the charges against the Student. Moreover, "[t]he 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.

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 March, 2010.

WILLIAM BRADLEY BRYANT
ASSISTANT CHAIRMAN FOR APPEALS