

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2010-65
	:	
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by J. W. (sometimes referred to as “Student”) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the last day of the 2009-2010 school year, with the option of attending an alternative school during the period of expulsion, after finding him guilty of possessing unlawful drugs. The Student claims that there was no evidence that he was in possession of any drugs and the hearing was improperly conducted because the witnesses were not sequestered. The Local Board’s decision is sustained.

On December 18, 2009, an assistant principal received a report that two students were observed leaving campus and going to a vehicle in the parking lot. Later, the assistant principal learned the names of the two students and questioned them about their activities. The students claimed they had not left campus, but, instead, had gone to J. W.’s car in the parking lot and had been smoking marijuana in the car. The principal was called into the investigation and he took J. W. to J. W.’s car. The principal found a can with a partial marijuana cigarette butt in it. The principal charged J. W. with possession of an illegal drug on campus.

At the tribunal hearing on the charge, the assistant principal testified that two other students admitted they went to J. W.’s car and smoked marijuana. The principal testified that he found residue from a marijuana cigarette in J. W.’s car. J. W. testified that he was at the car with the two students who admitted to smoking marijuana. The tribunal found J. W. guilty of possessing an illegal drug on campus and expelled him until the end of the 2009-2010 school year with the option of attending an alternative school during the expulsion period. The Local Board upheld the tribunal’s decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

On appeal, the Student claims that there was no evidence that he possessed any marijuana on campus; that the only evidence linking him to the marijuana was his ownership of the automobile, to which others had equal access.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). A local board of education, however, has the burden of proof whenever it charges a student with a violation of its policies. *See, e.g., J. G. v. Columbia Cnty. Bd. of Educ.*, Case No. 1996-40 (Ga. SBE, Sep. 12, 1996). In the instant case, there was evidence that the Student was in possession of the marijuana by virtue of his being at his car when the smoking occurred and it does not appear that the other two students entered his car without his knowledge and consent.

The law recognizes the concept of constructive possession when a person has the "power and intention" of exercising "dominion and control" over something. *See, Lockwood v. State*, 257 Ga. 796, 797, 364 S.E.2d 574, 576 (1988). There is a presumption of constructive possession when contraband is discovered in an automobile owned or used by an individual. If, however, others have equal access to the automobile and the only evidence linking the person charged is the ownership or possession of the automobile, then there cannot be a conviction based solely on that evidence. *See, Pittman v. State*, 208 Ga. App. 211, 214, 430 S.E.2d 141, 144 (1993). In the instant case there is more than the Student's ownership of the automobile to link him to the marijuana cigarette.

The Student also claims that he was denied due process because the assistant principal, who presented the case on behalf of the school system, turned on her walkie-talkie radio during the hearing so that the resource officer, who was supposed to be sequestered, could listen to the testimony. In addition, the Student claims that he was denied due process because the assistant principal gave testimony and prosecuted the case. Both of these claims, however, are without merit. Regarding the claim that the resource officer was permitted to overhear testimony before he testified, there is no evidence in the record that the assistant principal allowed the testimony to be broadcast to the resource officer. The Student did not raise any issue during the hearing about the assistant principal giving testimony and serving as prosecutor. "If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made." *Hutcheson v. DeKalb Cnty. Bd. of Educ.*, Case No. 1980-5 (Ga. SBE, May 8, 1980). The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board. *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was some evidence to support the decision of the tribunal. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of May 2010.

William Bradley Bryant
Vice Chairman for Appeals