STATE BOARD OF EDUCATION

STATE OF GEORGIA

ACIE F.,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1988-34**
v.	:	
	:	**DECISION**
LAMAR COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Acie F. ("Appellant") from a decision by the Lamar County Board of Education ("Local Board") to suspend Appellant from school for the first semester of the 1988-1989 school year because of possession of alcohol on school premises. The appeal is based upon Appellant's contention that the Local Board exceeded its authority, improperly conducted a hearing, and made its decision without any supporting evidence. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

On June 10, 1988, Appellant's parents were sent written notice that Appellant was charged with being in possession of a can of beer in his book bag on the last day of school. Appellant was completing his seventh grade year. The notice informed the parents that the Local Board would conduct a hearing on June 14, 1988, that Appellant could be expelled from school if found guilty, that they had the right to have an attorney present, the right to subpoena witnesses, and the right to question witnesses called to testify against Appellant.

The hearing was held on June 14, 1988. Appellant and another student testified that on the evening of June 2, 1988, the other student was given a can of beer in a paper sack by an

individual who was not a student. The other student walked to Appellant's house and placed the paper sack on the porch of Appellant's house while they and some other children began playing. The group was some distance from Appellant's house when a car arrived to take the other student home. The other student shouted to Appellant and asked Appellant to bring the paper sack to him at school the next day. Appellant took the paper sack and placed it into his book bag without looking inside to determine its contents.

The next morning, during first period, and shortly after school began, Appellant's homeroom teacher noticed a liquid on the floor of her classroom. She determined that it had an alcoholic smell and reported the matter to the principal. The principal asked her administrative assistant to investigate the matter. The administrative assistant discovered the book bag in the boys' rest room with the can of beer inside. The administrative assistant took Appellant to his office and called Appellant's parents. When Appellant's parents arrived, Appellant admitted he had brought the can to school, but denied that he knew it contained beer.

At the conclusion of the hearing, the Local Board voted to suspend Appellant from school for the first semester of the 1988-1989 school year. An appeal to the State Board of Education was filed on July 14, 1988.

PART III

DISCUSSION

Appellant maintains on appeal that the hearing was improperly held because the Local Board's attorney acted as the hearing officer. Additionally, Appellant maintains that the Local Board did not follow its own rules since the rules provide that a student in possession of alcohol can only be suspended for the remainder of the year, but he was suspended for a semester in the subsequent year. Appellant also maintains that the Local Board violated its own rules because it did not provide a court reporter at the hearing and the decision was not based solely on the

evidence presented at the hearing.

The Local Board's rules provide:

> A student shall not possess ... alcoholic beverage ... on the school grounds during and immediately before or immediately after school hours.

The Local Board's hearing procedure rules provide:

> Rule 28. Conduct of the Hearing
>
> 1) ... The board shall provide a court reporter to make a record of any information orally presented to it at the hearing....
>
> 2) ... Members of the board and the principal, the school system's attorney, the student or his parents or his legal representative may question witnesses....
>
> 3) ... the student may bring an attorney to the hearing.
>
> Rule 30. Disposition of the Case
>
> The board shall reach its decision on whether the student violated a rule.... The decision must be based solely on the evidence presented at the hearing....
>
> When some misconduct is found ... the board shall specify what action, if any, should be taken with respect to the student. The specified action may range from no action through the entire scope of counseling attempts and possible penalties including expulsion for the remainder of the school year.

Appellant claims that the hearing before the Local Board was improperly conducted because he was not represented by an attorney after his parents were advised by the acting superintendent that an attorney was not necessary. There is nothing in the record to support this claim. On the contrary, the record shows that Appellant and his parents were given written notice of his right to have an attorney present at the hearing.

Appellant also claims that the hearing was improperly conducted because the local board's attorney acted as the hearing officer, because speculative and hearsay testimony was

admitted, and because a court reporter was not present. None of these issues was raised at the hearing before the Local Board. If an issue is not raised at the hearing before the local board, it cannot be raised for the first time on appeal. O.C.G.A. § 20-2-1160; Sharpley v. Hall Cnty. Bd. of Educ., 251 Ga. 54 (1983); Jarrod S. v. LaGrange City Bd. of Educ., Case No. 1984-21 (St. Bd. of Ed., Apr. 11, 1985). Nevertheless, speculative and hearsay testimony is admissible in an administrative proceeding. Chris V. v. DeKalb Cnty. Bd. of Educ., Case No. 1986-13 (St. Bd. of Educ., Jun. 12, 1986). The testimony that Appellant complains about was immaterial in the case because Appellant admitted that he brought the can of beer to school. The fact that a certified court reporter was not present did not do any violence to the proceedings because the Local Board recorded the hearing and provided a verbatim transcript of the hearing for the appeal. We, therefore, conclude that the Local Board did not improperly conduct the hearing.

Appellant also claims on appeal that the Local Board failed to follow its own rules, specifically rule 30, because it imposed an expulsion period in a subsequent year, whereas Rule 30 provides for expulsion "for the remainder of the school year". The incident occurred on the last day of the school year. Appellant was permitted to attend school and complete the day's activities. The hearing before the Local Board did not occur until after the 1987-1988 school year was completed. Under Appellant's theory, students could destroy the school building on the last day of the school year and be exempt from any punishment by the Local Board because the school year was completed. Appellant has not cited any authority to support the position that a local board that meets and decides a case between two school periods cannot impose sanctions that relate to the subsequent school period if the subsequent school period happens to fall in another school year. We are not persuaded by Appellant's arguments and, therefore, conclude that the Local Board did not err in suspending Appellant for the first semester of the subsequent school year.

Appellant also claims that the punishment was unduly harsh and the Local Board's decision was not supported by the evidence. The State Board of Education follows the rule that if

there is any evidence to support the decision of a local board, then that decision will not be disturbed on appeal in the absence of any showing of illegality. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11. In the instant case, Appellant admitted he brought the can of beer to school. Even though he testified that he was unaware the paper sack contained any beer, the Local Board was not required to believe his testimony. There also has not been any showing that the Local Board's decision was illegal. We, therefore, conclude that there is no basis for reversing the local board's decision.

PART IV

DECISION

Based upon the foregoing, the record presented, and the briefs and arguments of counsel, the local board did not exceed its authority or render a decision that was contrary to law. The decision of the local board is, therefore.

SUSTAINED upon the vote of Mrrs. Foster. Smith. Lathem, and Abrams. Mrs. Baranco, Mrrs. Owens, Sears and Carrell voted to reverse the decision of the local board.

Mrs. Cantrell was not present.

This 10th day of November. 1988.

John M. Taylor
Vice Chairman for Appeals