

STATE BOARD OF EDUCATION

STATE OF GEORGIA

D. L.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1999-54
	:	
COBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by D. L. (Student) from a decision by the Cobb County Board of Education (Local Board) to permanently expel him, with the option of attending an alternative school following one year of expulsion, after a student disciplinary tribunal found him guilty of possessing an explosive device on school property. The Student claims that there was no competent evidence to support the charges because the evidence was primarily hearsay. The Local Board's decision is reversed because it is based solely upon hearsay evidence.

On Sunday, April 25, 1999, a police officer found the Student, a 14-year old ninth grader, in the woods adjacent to an elementary school with two other students. The group had some paraphernalia that caused the police officer to call a bomb squad. The Student was charged with violating the Local Board's policy JCDAC, which prohibits the use or possession of weapons and explosives on school property.

At the hearing before the student disciplinary tribunal, the police officer testified that he discovered the students standing around a tree stump that had some nail polish remover, some model rocket fuel, and some cylindrical objects on it. The police officer previously had found a piece of plastic piping and some nails on the ground in the woods a short distance from where he found the students. The plastic piping had some burned tape on one end. The police officer also testified that he later returned to the scene to determine if the tree stump was located on school property. The remainder of the police officer's testimony was hearsay.

The principal of the Student's school and another police officer also testified, but they related only hearsay testimony. The principal was not present when the students were discovered and relied on what others told him. The other police officer similarly based his testimony on what others told him since he was not directly involved in the investigation.

“In this state even in the absence of objection, hearsay is without probative value to establish any fact.’ ... We have held this to be the rule even in administrative hearings.” (citations omitted.) *McGahee v. Yamaha Motor Manufacturing Corp. of Amer.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994).

The Local Board argues that there was direct evidence that the Student had a Category I weapon (an incendiary device) on school property. There was, however, no evidence presented that the Student was on school property. The police officer testified that the place where he found the Student was on school property, but the police officer did not have any independent knowledge whether the location was school property; his testimony was based upon what someone else told him. The students were in some woods adjacent to an elementary school, but there were no boundary markers, fences, or sidewalks to identify school property and the Student could have been on private property. In the absence of any other evidence to establish that the Student was on school property, the charges against the Student must fail.

There was also no evidence to connect the Student with any type of incendiary device as defined in the Local Board's policy. The Student was found with some rocket fuel, nail polish remover, and some cylindrical objects. None of these items, singly or in combination, constituted an incendiary device. One of the police officers testified that the students could have put together a bomb or incendiary device with some of the materials they had available, but the ability to act is not action and until the students acted on their ability, they cannot be held to have been in possession of an incendiary device.

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

This ____ day of November 1999.

Bruce Jackson
Vice Chairman for Appeals