

STATE BOARD OF EDUCATION

STATE OF GEORGIA

F. L.,

Appellant,

vs.

DEKALB COUNTY
BOARD OF EDUCATION,

Appellee.

:
:
:
:
:
:
:
:
:

CASE NO. 1999-65

DECISION

This is an appeal by F. L. (Student) from a decision by the DeKalb County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to remove him from the regular alternative school and send him to the night alternative school until the end of the 1999-2000 school year after he was found guilty of being under the influence of drugs on school property as the result of smoking marijuana. The Student claims that he was denied due process because his right to cross examine witnesses was abridged and because prejudicial testimony and evidence was improperly admitted. The Local Board's decision is reversed.

On the morning of August 27, 1999, a school administrator claimed that he detected the odor of marijuana when Appellant entered the school building. The administrator also said that the Student was not as responsive or coherent as normal. A search of the Student failed to disclose any marijuana and the Student claimed he had only been smoking a cigar before arriving at school. The Student was charged with being under the influence of a drug and with violation of probation.

A student disciplinary tribunal found the student guilty of the charges and transferred him from the regular alternative school to the night alternative school until the end of the 1999-2000 school year. The Local Board upheld the tribunal's decision when the Student appealed. The Student then appealed to the State Board of Education.

The Student claims that he was denied an opportunity to cross examine witnesses during the hearing before the student disciplinary tribunal. When he attempted to establish the amount of training the administrator had in detecting marijuana, the hearing officer gratuitously advised the administrator not to answer because "the rules of evidence in a Tribunal are much different than the rules of evidence in a Criminal Court." When the Student asked whether any drugs were found, the hearing officer sustained an objection to the question. The Student later tried to ask about the marijuana smell and the hearing officer cut him off with the observation that the question had been asked on direct examination.

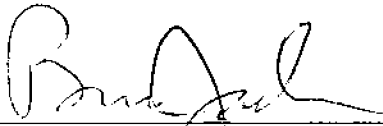
The hearing officer erred in stating that tribunals operate by different rules of evidence than criminal court and then limiting the Student's cross-examination of the administrator who claimed to have smelled marijuana. The difference is in the standard of proof and not, as construed by the hearing officer, in the right to conduct a thorough and sifting cross-examination.

The entire case against the Student rested on the marijuana smell and the administrators' observations of the Student's conduct. O.C.G.A. § 24-9-65 permits opinion evidence if the witness provides sufficient facts to show the basis of the opinion. O.C.G.A. § 20-2-64 provides that a party has the right to conduct a thorough and sifting cross-examination, and O.C.G.A. § 20-2-754(b)(2) requires the tribunal or hearing officer to ensure that the parties have an opportunity to cross examine witnesses on all unresolved issues. The administrator, however, did not testify about any facts to show the basis for his opinion that there was the smell of marijuana and the Student was denied any opportunity to test, question, or discredit the witness' observations or abilities to detect marijuana. In the absence of a thorough and sifting cross-examination, the tribunal lacked any basis to test the credibility of the witness. The unsubstantiated opinion

testimony of the administrator cannot serve as the basis for disciplining the Student. The State Board of Education concludes that the hearing officer's denial of an opportunity to effectively cross-examine witnesses denied the Student due process. Additionally, there was no evidence to support the charges since only the unsubstantiated testimony of the administrator was presented.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student was denied due process because he was prohibited from effectively cross examining the witnesses against him and there was no evidence to support the charges. Accordingly, the Local Board's decision is REVERSED.

This 23rd day of January 2000.



Bruce Jackson
Vice Chairman for Appeals