

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>V. L. F.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2001-19</b>
	:	
<b>BIBB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by V. L. F. (Student) from a decision by the Bibb County Board of Education (Local Board) to uphold the decision of a student disciplinary hearing officer to assign him to an alternative school for 18 weeks after finding that he stole school property. The Student claims he was denied due process because hearsay testimony was allowed and he was not permitted to introduce evidence about the discipline of another student. Additionally, the Student claims that a tie vote by the members of the Local Board could not sustain the decision of the hearing officer. The Local Board’s decision is sustained.

On September 28, 2000, the Student stole \$250.00 that had been collected by a student club and stored in a classroom. The Student gave \$120.00 to another student who had distracted the teacher while the Student took the money. At the hearing before a student disciplinary hearing officer, the student who received the \$120.00 testified about what the Student had done. Additionally, another student, who observed the theft, testified.

The Student claims that he was denied due process because hearsay testimony by an assistant principal was allowed. There was however, direct evidence that the Student took the money in the form of the testimony by his accomplice and an eyewitness. Since the decision did not rest solely upon hearsay evidence, there was evidence to support the hearing officer’s decision and the Student was not denied due process. *See, Margaret James v. Clarke Cnty. Bd. of Educ.*, Case No. 1984-1 (Ga. SBE, May 10, 1984). The State Board of Education, therefore, concludes that the Student was not denied due process because of the introduction of hearsay testimony.

The Student also claims that he was denied due process because he was unable to cross-examine the principal about the punishment imposed upon his accomplice. The hearing officer ruled that federal law prohibited any evidence concerning the punishment given to another student. Regardless of the accuracy of the hearing officer’s ruling, the punishment imposed upon another student was not relevant to a determination in the case against the Student. The actions of the two students were different and did not require the same punishment – the Student took the money while the other student received the money from the Student. The State Board of

Education concludes that the hearing officer did not deny the Student due process because she disallowed cross-examination about the punishment given to his accomplice.

The Student also claims that he was denied due process because the hearing officer was biased since the hearing officer asked questions, ruled against his cross examination, misstated the law, and denied his motion for a directed verdict. None of the Student's allegations, however, establish that the hearing officer was biased. The duty of the hearing officer is to assist in the conduct of the hearing, which, from time to time, may require questioning of witnesses when testimony is unclear. The hearing officer correctly stated that hearsay testimony was allowable and did not, as charged by the Student, place any burden of proof upon the Student. The hearing officer also did not improperly prevent the Student from cross-examining the principal about the discipline imposed upon his accomplice. The hearing officer's refusal to grant a directed verdict was within the hearing officer's discretion and does not establish any bias. The State Board of Education concludes that there was no evidence that the hearing officer was biased.

When the Student appealed to the Local Board, the Local Board evenly split on whether to uphold the hearing officer's decision. The Student claims that the hearing officer's decision cannot be upheld without a majority vote by the Local Board. The Local Board, however, was acting as an appellate body in reviewing the hearing officer's decision. Accordingly, a majority vote of the Local Board was necessary to reverse the hearing officer's decision. Thus, regardless of how the motion is stated, an appeal presents a motion to a local board of education to overturn the decision of a tribunal or hearing officer. If a local board of education evenly splits on an appeal, the status quo remains. The State Board of Education, therefore, concludes that the failure of a majority of the Local Board to vote to uphold the hearing officer's decision results in the affirmation of the hearing officer's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student was not denied due process, nor did the vote by the Local Board of Education result in a reversal of the hearing officer's decision. Accordingly, the decision to assign the Student to alternative school for 18 weeks is  
SUSTAINED.

This \_\_\_\_\_ day of February 2001.

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Bruce Jackson  
Vice Chairman for Appeals