

**STATE BOARD OF EDUCATION**  
**STATE OF GEORGIA**

<b>D. G.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-40</b>
	:	
<b>PICKENS COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by D. G. (Student) from a decision by the Pickens County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel her from regular school until the beginning of the second semester of the 2005-2006 school year after finding her guilty of possessing marijuana on school property. The Student claims that the evidence did not support the charge and she was denied due process. The Local Board’s decision is sustained.

On November 29, 2004, a teacher observed a student remove a packet of marijuana from the Student’s book bag. The Student was charged with violating the Local Board’s policy that prohibits the possession of drugs on school property.

A hearing was held before a student disciplinary tribunal on December 15, 2005. The tribunal decided to expel the Student until the end of the first semester of the 2005-2006 school year. The Local Board upheld the tribunal’s decision when the Student appealed. The Student then filed a timely appeal to the State Board of Education.

The Student claims that the evidence did not support the charges and that she was denied due process and legal representation.

The Student claims that the only evidence that connects her to the marijuana was the testimony of the student who took the marijuana from her book bag. She further argues that under O.C.G.A. § 24-4-8 a co-defendant’s testimony is insufficient to support a conviction. The Student’s argument, however, overlooks the testimony of the teacher who observed the interaction between the Student and the other student and the other student’s removal of the marijuana from the Student’s book bag. Additionally, O.C.G.A. § 24-4-8 is only applicable in prosecutions for treason, perjury, and felony cases. The Student was charged with violating a Local Board policy and not with a crime. The provisions of O.C.G.A. § 24-4-8, therefore, are inapplicable in the instant case. The State Board of Education concludes that there was evidence to support the charges.

The Student claims she was denied due process because there is no ascertainable standard of proof before the tribunal. Tribunal hearings are civil proceedings and, therefore, require only a preponderance of evidence to establish a fact. *See*, O.C.G.A. § 24-4-3. The tribunal was advised by the hearing officer that there had to be sufficient direct evidence to support their decision. The State Board of Education, therefore, concludes that the tribunal was aware of and applied an ascertainable standard of proof and did not deny the Student due process.

The Student also claims, without citing any authority, that she was denied due process because she was not notified of when her appeal would be considered by the Local Board. There is no requirement to notify a student when a local board will review an appeal from a tribunal decision. The only requirement is for the local board to review the record and render a decision within ten days of receiving the appeal from the tribunal decision. O.C.G.A. § 20-2-754(d). The statute only provides for a review of the record; it does not provide for oral argument before the local board. The Local Board, therefore, did not deny the Student due process by not providing her with a date that the appeal would be reviewed.

The Student also claims that she was denied due process because the notice of the Local Board's decision did not contain a notice that she had a right to appeal to the State Board of Education. Since the Student filed a timely appeal to the State Board of Education, any error in failing to notify the Student of her right to appeal was harmless. The State Board of Education, therefore, concludes that the Local Board did not deny the Student due process by not giving her notice of her right to appeal.

The Student also claims that she was denied due process because she was denied legal representation in her appeal to the Local Board since the Local Board failed to tell her when the Local Board was going to review her appeal from the tribunal decision. As previously stated, there is no right to have an argument before a local board when it is considering an appeal. The Student, therefore, was not denied legal representation.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and that the Local Board did not deny the Student due process. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of June 2005.

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William Bradley Bryant  
Vice Chairman for Appeals