

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. D., :
 :
 Appellant, :
 :
 vs. : **CASE NO. 2006-06**
 :
 BARTOW COUNTY :
 BOARD OF EDUCATION, :
 : **DECISION**
 Appellee. :

This is an appeal by A. D. (Student) from a decision by the Bartow County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the first semester of the 2005-2006 school year after finding him guilty of possessing marijuana on school property during school hours. The Student claims that there was no credible evidence to support the decision, the decision was an abuse of discretion, and the decision was arbitrary and capricious. The Local Board's decision is sustained.

On April 21, 2005, school administrators were told that the Student possessed some marijuana on school property. Marijuana was found on another student, but witnesses said that the Student placed the marijuana on the other student. When questioned, the Student pointed out the location of the marijuana. The substance tested positive as marijuana. The Student was charged with substance abuse and a student disciplinary tribunal was appointed to hear the charges.

Three witnesses testified that the Student had the marijuana wrapped in foil and he showed it to the witnesses during seventh period class. The witnesses then testified that the Student gave the marijuana to another student because he thought he was going to be searched. The tribunal found him guilty of possessing the marijuana and expelled him 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 appealed to the State Board of Education.

The Student claims that there was no credible evidence to support the tribunal's decision. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No.

1991-14 (Ga. SBE, Aug. 8, 1991). In the instant case, there was direct testimony from three witnesses that identified the Student as the owner of the marijuana. The Student claims that the student witnesses lied during the tribunal hearing. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). There was, therefore, some evidence to support the tribunal's decision.

The Student also complains that the school system failed to present the Student's statement, the behavior history of the student witnesses, and a drug screening of the Student performed after the incident. There is, however, no requirement for a school system to present all of the possible evidence that might be available. The Student had an opportunity to present the evidence that he now feels would have been favorable to his cause and should have been presented by the school system, but he did not attempt to make such a presentation. The State Board of Education concludes that the school system did not commit any error by limiting the evidence that it presented.

The Student complains that the Local Board abused its discretion by violating O.C.G.A. § 20-2-754 because he was not permitted to address the Local Board. O.C.G.A. § 20-2-754, however, does not require a local board of education to hear from a student or his representative. Instead, O.C.G.A. § 20-2-754 provides that a student can be represented at the tribunal hearing, but "the local board of education shall review the record and shall render a decision in writing. The decision shall be based solely on the record" O.C.G.A. § 20-2-754(d). There is, therefore, no merit in the Student's argument that the Local Board was arbitrary and capricious.

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 the Local Board did not abuse its discretion. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2005.

Wanda T. Barrs
Chair, State Board of Education