

STATE BOARD OF EDUCATION

STATE OF GEORGIA

T. D.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-22
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by T. D. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him from school until June 1, 2005, provided that he attends a drug offender program and performs 30 hours of community service before December 1, 2005. If the Student fails to attend the drug offender program and perform 30 hours of community service, then he is to be expelled until the end of the second semester of the 2005-2006 school year. The Student claims that there was no evidence to support the tribunal's decision. The Local Board's decision is sustained.

The Student was accused of selling marijuana to another student on campus. The other student, H. C., then delivered the drugs to another student, O. P., the next day while they were in class together. The only direct evidence that the sale occurred was H. C.'s testimony. There was also other circumstantial evidence, which will be discussed below. A student disciplinary tribunal found the Student guilty of possessing and distributing marijuana on school grounds and of providing false information to school officials. The tribunal suspended the Student until June 1, 2005, but imposed the additional conditions that he perform 30 hours of community service and attend a drug offender program before December 1, 2005, or be subject to being expelled during the second semester of the 2005-2006 school year. The Local Board upheld the tribunal's decision and the Student then filed a timely appeal with the State Board of Education.

The Student claims that there was no credible evidence that he sold or distributed drugs to another student. Additionally, he claims that the charge letter provided to him was deficient and did not permit him to prepare his defense against the charges. The Student also claims that the school system failed to provide him with witness contact information and copies of the documents that were to be introduced at the hearing and that documents were improperly admitted during the tribunal hearing. Finally, the Student claims that he was denied substantive due process by being required to attend a drug offender program and perform community service in the absence of any evidence he sold drugs..

The Student's first claim is that there was no credible evidence that he sold drugs to another student because the testimony of H. C., the student who accused him of selling drugs to

her, was incredible. During the hearing, H. C. admitted that she had lied when she made some statements and her testimony about when the transaction occurred was disorganized. Nevertheless, "[i]t is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 11, 1996). Another student testified that the Student asked him to join him in his drug activities and also asked him to vandalize O. P.'s house because she had not paid for the drugs she obtained. There was, therefore, evidence to support the tribunal's decision.

The Student also claims that the charge letter was deficient and did not permit him to prepare a defense. The charge letter, in describing the expected testimony of the witnesses, referred to "an alleged incident outside of school and a report of a threat," and did not provide any specifics. The charges against the Student, however, did not relate to either of these occurrences so there was nothing against which the Student needed to prepare a defense that was not fully set forth in the charge letter.

The Student claims that he was denied access to documents that were admitted during the hearing, thus depriving him of due process. The Student, however, was provided in advance with all the documents submitted as evidence by the school system. The transcript of a computer messaging session between the Student and H. C. was presented by H. C., not by the school system. There was no evidence that the school system had a copy of the transcript before the hearing. The State Board of Education, therefore, concludes that the school system did not deny the Student due process when it did not provide him a copy of a document submitted as evidence by another student.

The Student also claims he was denied due process because he was not given access to the witnesses. The charge letter, however, named all of the witnesses and provided instructions on how to obtain subpoenas. Additionally, the Student was given copies of the statements made by the student witnesses. The school system, therefore, did not deprive the Student of any access to the witnesses.

The Student also claims that he was denied substantive due process since he is being required to attend a drug abuse program and perform community service in the absence of any evidence that he sold drugs. As noted, above, there was evidence from which the tribunal could find that the Student possessed and sold drugs on the campus. The punishment imposed was within the discretionary authority of the Local Board based upon the offense. The State Board of Education concludes that the Student was not denied substantive due process.

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 Student was not denied procedural or substantive due process. Accordingly, the Local Board's decision is **SUSTAINED**.

This _____ day of November 2005.

William Bradley Bryant
Vice Chairman for Appeals