

STATE BOARD OF EDUCATION

STATE OF GEORGIA

K. H.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2007-49
	:	
EVANS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by K. H. (Student) from a decision by the Evans County Board of Education (Local Board) to expel him for the remainder of the 2006-2007 school year and to assign him to an alternative school for the first semester of the 2007-2008 school year after a student disciplinary tribunal found him guilty of drinking an alcoholic beverage while in school. The Student claims that he was denied procedural due process and equal protection, and that the Local Board abused its discretion. The Local Board’s decision is sustained.

On January 30, 2007, the Student’s principal became aware that several students had been drinking alcohol during the breakfast period. The principal learned that the Student was one of the students present at the table where the alcohol was consumed. A Georgia State Patrol officer was at the school to make a presentation about drinking and the principal had the officer administer an Alco-Sensor® test to all of the students who were identified as drinking. The Student had a blood alcohol level of .008 grams. The Student was charged with drinking an alcoholic beverage.

A student disciplinary tribunal heard testimony from the principal and the patrol officer. The Student also testified before the tribunal. The Student claimed that he did not drink any alcohol. He presented the results of a blood test a doctor administered in the afternoon that was negative for any alcohol.

The tribunal found the Student guilty and expelled him from regular school until the beginning of the second semester of the 2007-2008 school year, with the option of immediately enrolling in an alternative school. When the Student appealed to the Local Board, the Local Board denied the Student the option of enrolling in an alternative school during the remainder of the 2006-2007 school year, but permitted him to enroll in an alternative school during the first semester of the 2007-2008 school year. The Student then appealed to the State Board of Education.

The Student claims that he was denied due process because the patrol officer did not show him the results of the Alco-Sensor® test. Although the Student testified that he was not shown the results of the test, there was testimony from the patrol officer and the principal that the Student was shown the test results immediately after the test was administered. "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). Since there was evidence that the Student was shown the results of the test, the Student's claim of a denial of due process is not supported by the record.

The Student claims that he was denied an opportunity to obtain a proper test because he was not arrested and administered a more comprehensive test. The Student, however, has not cited any statute, rule, regulation, or policy that dictates a due process requirement of arrest of a student who fails to follow the rules. The State Board of Education concludes that the Local Board did not deny the Student due process by failing to have him arrested.

The Student claims that he was denied equal protection because the other students involved in the incident did not receive punishment as severe as his punishment. The record, however, does not contain any information concerning the other students. "An equal protection claim arises when an individual contends that he is receiving different treatment from that received by other individuals similarly situated;A preliminary step in equal protection analysis is to determine whether persons who are similarly situated are subject to disparate treatment." *Spencer et al. v McCarley Moving & Storage Company, Inc. et al.*, 174 Ga. App. 525, 528, 330 S.E.2d 753, 758 (1985). The State Board of Education can only review the evidence presented before the tribunal. *Deiangelo E. v. Coffee Cnty. Bd. of Educ.*, Case No. 1991-21 (Ga. SBE, Sep. 12, 1991). The Student, therefore, has not shown that he is similarly situated to the other students, or that they received treatment different from the treatment he received. The State Board of Education, therefore, concludes that the Student's claim of a denial of equal protection is without merit.

The Student also claims that there was no evidence that he refused to cooperate or was insubordinate. The Student's cooperation and obedience to directions, however, were irrelevant because the school system only charged him with possessing and using alcohol and there was evidence to support the charge. The Student's claim, therefore, is without merit.

The Student also claims that the tribunal improperly failed to give any consideration to a letter from the Student's doctor that a test for alcohol, which was given in the afternoon, was negative and established that the Student could not have consumed any alcohol in the morning. The letter was hearsay evidence and the school system did not have an opportunity to cross-examine the doctor. Testimony presented by the principal and the patrol officer established that the alcohol would have dissipated from the Student's system by the time he was tested by the doctor. There was no evidence that

the tribunal failed to consider the letter; it could have considered the letter but found it unbelievable. The Student's claim, therefore, is without merit.

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

This _____ day of July 2007.

William Bradley Bryant
Vice Chairman for Appeals