

STATE BOARD OF EDUCATION

STATE OF GEORGIA

L. S.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2007-58
	:	
CARROLLTON CITY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by L. S. (Student) from a decision by the Carrollton City Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel her until the beginning of the first semester of the 2008-2009 school year, with an opportunity to attend an alternative school during her expulsion, after finding her guilty of possessing marijuana on school property.¹ The Student claims that there was no evidence to support the tribunal’s decision. The Local Board’s decision is reversed.

On April 10, 2007, the Student, a ninth grader, was charged with possessing marijuana. A student disciplinary tribunal conducted a hearing on April 13, 2007. During the hearing, the school system claimed that the Student had received marijuana from another student while at school. The school system introduced the Student’s statement, which said:

He gave me something – green stuff – and put it in my bag. I didn’t ask him nothing, but he gave it to me in Coach Sharp’s class. He didn’t really say nothing when he gave it to me. He came and got it from my house and haven’t [sic] had it but that one time. Don’t have it no more.

The Student testified that the other student, who was her boyfriend, asked her for her purse during their science class. She said that she was unaware he had put anything into her purse until she got home and noticed that there was a small package of some “green stuff” wrapped in a plastic paper wrap, but she did not recognize what it was and did not take it out of her purse. On the following Saturday, the other student brought her a Valentine present, went through her purse, and took the package out of her purse.

¹ The tribunal also ruled that the Student may return to regular school at the end of the first semester of the 2007-2008 school year if she receives a favorable recommendation from the alternative school principal.

An assistant principal testified that he relied upon the statements of other students in the class to determine that the Student had possessed marijuana in class. None of the students were called to testify, but their statements were introduced into evidence with their names redacted so the Student was unable to determine who made the statements.

The tribunal found the Student guilty of possessing marijuana at school and expelled her from regular school until the beginning of the 2008-2009 school year, provided, however, that she could enroll in an alternative school and, if the principal of the alternative school so recommended, she could return to regular school in January 2008. The Local Board upheld the tribunal's decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

The Student claims that no evidence was ever presented that she had marijuana at school. The Student also claims that she was denied due process because the school system would not permit her to cross-examine the students who submitted statements accusing her of possessing marijuana. The Local Board argues that the Student's statement and testimony was sufficient evidence to support the tribunal's decision. The Local Board also contends that it is of no consequence whether the Student was denied her due process right to cross-examine the students who gave written statements.

A local board of education has the burden of proof when it charges a student with an infraction of its rules. *Scott G. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1988-26 (Ga. SBE, Sep. 12, 1988). In the instant case, the school system failed to carry its burden. The school system did not present any evidence that the substance placed in the Student's purse was marijuana. The Student's statement and testimony only established that some "green stuff" was placed in her purse; there was no proof presented that the "green stuff" was marijuana. It is only through conjecture that the "green stuff" becomes marijuana. The school resource officer testified that yard grass, parsley, and oregano could be mistaken for marijuana and that only testing of the substance can support a charge of marijuana possession. An investigator for the public defender's office also testified that a substance had to be tested before it could be identified as marijuana. The substance, however, was not tested and there was no evidence presented that it was marijuana. Since there was no evidence that the substance was marijuana, the school system failed to meet its burden of proof to sustain the charge against the Student.

The Local Board argues that the statements submitted by the other students establish that the Student possessed marijuana in school. The statements, however, do not establish anything since they constitute hearsay evidence; they were out-of-court statements made by persons that were unavailable for cross-examination. The Georgia courts have held that hearsay evidence has no probative value whatsoever. *See, e.g., McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994). *See, also*, O.C.G.A. § 24-3-1. The statements submitted by the other students did not contain any specifics. They did not contain any dates of when anything occurred. They did not state that the students actually saw marijuana being passed, nor did they contain any information about how the students would have known that marijuana was placed in the Student's purse. The assistant principal admitted that he did not attempt to verify how

the students would have known that marijuana was present and that they could have misidentified some other substance as marijuana.

In addition to the statements of the other students not having any probative value, any reliance by the school system on the statements constitutes a denial of due process. O.C.G.A. § 20-2-754(b)(3) provides that a student will have the right to examine and cross-examine all witnesses. The Student, however, was denied any opportunity to cross-examine the students who made the statements.

Based upon the foregoing, it is the opinion of the State Board of Education that the school system failed to carry its burden of proof to establish that the Student possessed marijuana at school. Accordingly, the Local Board's decision is REVERSED.

This _____ day of October 2007.

Wanda T. Barrs
Chair