

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>Z. B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2008-44</b>
	:	
<b>BARTOW COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Z. B. (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 until December 31, 2008, after finding him guilty of substance abuse. The Student claims that there was no evidence to support the charges. The decision of the Local Board is reversed.

The Student was charged with substance abuse based upon allegations that he crushed up an illegal pill and “snorted it” during school hours. A tribunal hearing was conducted on January 3, 2008. During the hearing, the school system did not present any witnesses, but instead only introduced the statements of some students. The students who wrote the statements were not present and were not available for cross-examination.

O.C.G.A. § 20-2-754(b) (3) provides that in the conduct of a disciplinary hearing, all parties must be “afforded an opportunity to present and respond to evidence and to examine and cross-examine witnesses on all issues....” In the instant case, the Student was not given an opportunity to cross-examine any witnesses. The Local Board, therefore, failed to follow state law concerning conduct of disciplinary hearings.

The statements introduced into evidence were hearsay evidence. In Georgia, the courts have held that hearsay evidence has no probative value whatsoever and cannot be used to establish any fact, even in an administrative hearing. *McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2D 249, 251 (1994); *Finch v. Caldwell*, 155 Ga. App. 813, 273 S.E.2D 216 (1989). 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 only evidence presented was the hearsay statements of the other students. Since these statements have no probative value, the school system did not carry its burden of proof.

Based upon the foregoing, it is the opinion of the State Board of Education that the school system violated state law concerning disciplinary hearings and failed to

present any evidence to support the charges against the Student. Accordingly, the Local Board's decision is  
REVERSED.

This \_\_\_\_\_ day of May 2008.

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William Bradley Bryant  
Vice Chairman for Appeals