

STATE BOARD OF EDUCATION
STATE OF GEORGIA

J. F.,	:	
	:	
Appellant,	:	CASE NO. 2008-07
	:	
vs.	:	
	:	DECISION
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by J. F. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him until December 19, 2008, with the option of attending an alternative school during the period of expulsion, after the tribunal found him guilty of being under the influence of marijuana at school. The Local Board amended the finding of being under the influence of marijuana, but found the Student guilty of being “under the influence of a mood altering substance”. Before the Local Board, the Student claimed that he had smoked a cigarette made from cigar tobacco and presented the results of a drug test that showed that he had not smoked marijuana. The Student claims that he should only have been found guilty of smoking a cigarette, which only carries an in-house suspension. The Local Board’s decision is sustained.

On May 29, 2008, the Student was late in arriving at school. An assistant principal thought she smelled the odor of marijuana about the Student. Upon questioning, the Student admitted that he and two other students had smoked marijuana on the way to school. The Student was charged with being under the influence of an unlawful drug because he had smoked marijuana on the way to school, a Section III offense. At a hearing before a student disciplinary tribunal, the Student again admitted that he had smoked marijuana. The tribunal found him guilty of being under the influence of marijuana at school and expelled him from school until December 19, 2008, with the option of attending an alternative school during his expulsion period.

On the day following the tribunal hearing, the Student obtained a drug test. The drug test showed that the Student had not been under the influence of any drug. The Student then learned that what he had smoked was not marijuana, but tobacco from a cigar. The Student appealed the tribunal decision to the Local Board and submitted the results of the drug testing. The Student claims that he should only serve an in-school suspension for smoking tobacco rather than expulsion for being under the influence of marijuana. The Local Board amended the decision of the tribunal to find that the Student was under the influence of a mood altering substance and affirmed the decision to expel

the Student until December 19, 2008. The Student then appealed to the State Board of Education.

The Student claims that he was mistaken when he admitted that he was smoking marijuana. The Student claims that the Local Board also accepted the fact that he was not smoking marijuana when it amended the finding of the student disciplinary tribunal. The Student then claims that the maximum punishment for smoking tobacco, a Section I offense, is five days of in-school suspension rather than expulsion, which is provided for Section III offenses.

The Student's claims are based on evidence that was not submitted at the initial tribunal hearing. The State Board of Education, however, can only review evidence that was presented before the original hearing tribunal. *See, Deiangelo E. v. Coffee Cnty. Bd. of Educ.*, Case No. 1991-21 (Ga. SBE, Sep. 12, 1991). The Local Board's decision does not specifically provide that it rejected the tribunal's finding that the Student was under the influence of marijuana. Instead, the Local Board's decision states that it "amends the decision of the Disciplinary Hearing Officer in that [the Student] has violated Section III #1 of the 2007-08 Secondary Student Handbook. More specifically, [the Student] was under the influence of a mood altering substance." The Section III offense that the Student was charged with violating prohibits: "Being under the influence of any alcoholic beverage, any drug or substance declared unlawful, or any substance or chemical that is mood altering." Henry County Schools 2007-08 Student & Parent Handbook, page 46. It thus appears that the Local Board was merely changing the tribunal decision to track the language of the charge and the Student Handbook rather than rejecting the finding that the Student was under the influence of marijuana.

The test for marijuana was taken six days after the Student appeared at school. In addition to the fact that evidence submitted after the hearing cannot be considered upon review, there is also no evidence that a test taken six days after ingesting marijuana smoke would detect the use of marijuana.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board's decision was authorized by the evidence. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2008.

William Bradley Bryant
Vice Chairman for Appeals