STATE BOARD OF EDUCATION
STATE OF GEORGIA

L.P.,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO. 2009-59**
	:	
OCONEE COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by L.P. ("Student") from a decision by the Oconee County Board of Education ("Local Board") to expel the Student until the 2010-2011 school year, at which time she may re-enroll provided she completes the *Prime for Life* program. Specifically, the Local Board found that the Student violated Rule 8 of the *Student Behavior Code* by possessing and selling marijuana to other students. On appeal, the Student contends that the Local Board erred because (1) the Local Board did not follow appropriate protocol, (2) the Local Board erred by neglecting to respond to the Notice and Demand for Discovery and Inspection of Evidence, (3) the Local Board refused to accept or acknowledge the Public Servant Questionnaire, (4) the Local Board denied her due process, (5) the Local Board refused to grant a continuance, and (6) the Local Board's decision is based on hearsay.[1] For the reasons set forth below, the State Board finds these alleged errors are without merit. Therefore, this appeal is sustained.

I. BACKGROUND

During the 2008-2009 school year, the Student attended North Oconee High School. On April 2, 2009, the Student was notified that a disciplinary hearing would be held on allegations that she violated Rule 8 of the *Student Behavior Code* by possessing and selling marijuana to other students. Prior to the hearing, the Student sent a Notice and Demand for Discovery and Inspection of Evidence to the Local Board for discovery seeking evidence and other documents. In addition, the Student submitted a Public Survey Questionnaire to the principal that she asked him to complete. The Local Board did not respond to these requests. The Student received

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[1] The Student asserts that she was subjected to an unlawful search in violation of her rights and that the witnesses at her hearing were coerced. However, these issues were not raised at the initial hearing and cannot be made for the first time before this Board. Hutchenson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE May 1980). Moreover, the evidence relied upon by the Local Board in support of its decision was not the result of the alleged unlawful search. Furthermore, the record is devoid of any evidence supporting the assertion that the witnesses were coerced.

notice of the hearing but chose not attend because the Local Board had not responded to her requests.

At the hearing, two students testified. The first student testified that she had purchased marijuana from the Student in the school cafeteria right before spring break. The second student testified that on another occasion she had witnessed the Student give marijuana to another student in the school cafeteria. The principal testified about his conversation with another student who told the principal he had purchased marijuana from the Student.

After hearing all the evidence, the hearing officer recommended to expel the Student until the 2010-2011 school year. The Local Board affirmed the decision of the hearing officer to expel the Student until the 2010-2011 school year, provided that the Student enroll and complete the *Prime for Life* program.

II. ERROR ASSERTED ON APPEAL

A. Student Hearing Protocol, Notice of Discovery and Inspection of Evidence, and Public Servant Questionnaire.

The Student contends that the Local Board erred in the required protocol in her case. However, the Student fails to identify any legal basis supporting her contention. The Student further contends that the Local Board failed to respond to her Notice of Discovery and Inspection of Evidence and a Public Servant Questionnaire.[2] First, Georgia law does not require any discovery process for student disciplinary procedures. See O.C.G.A. § 20-2-754. Second, the Public Servant Questionnaire is irrelevant to a student disciplinary hearing. Moreover, this Board is unaware of a legal requirement for the Local Board to complete a Public Servant Questionnaire, much less such a requirement before conducting a student disciplinary hearing.

The Student further contends that she did not attend the hearing because the Local Board failed to respond to the Notice of Discovery and Inspection of Evidence and a Public Servant Questionnaire. Unfortunately, the disciplinary hearing was the Student's opportunity to respond to the charges against her. The Student admits she received notice of the hearing and chose not to attend. Thus, these errors are without merit.

B. Due Process.

The Student contends that her due process rights were violated. The Student fails to provide a basis supporting her contention. To the contrary, the Local Board provided the Student with a hearing before a hearing officer. The Student was provided notice and an opportunity to be heard in accordance with O.C.G.A. § 20-2-754. O.C.G.A. § 20-2-754(b)(3)

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[2] These documents were not included in the initial record submitted to the Board, but the Local Board has supplemented the record to include these documents for consideration by this Board.

provides that a student will have the right to examine and cross-examine all witnesses. The Student was not denied the opportunity to cross-examine the other students. The Student chose not to exercise her rights at the hearing and to cross-examine the witnesses. Thus, this assertion is without merit.

C. Continuance.

Appellant asserts that the Local Board erred by denying her a continuance. However, at oral argument, the Student conceded that she never asked for a continuance. Rather, the Student contends that a continuance was implicitly requested in the Notice of Discovery and Inspection of Evidence and a Public Servant Questionnaire. However, a review of these documents shows that the Student never requested nor suggested that she needed a continuance. Moreover, the granting of a continuance is within the sound discretion of the Local Board, and, absent a showing of clear abuse, is not grounds for reversal. Talmadge v. Elson Properties, 279 Ga. 268 (2005); Yearwood v. Greene County Bd. of Educ., Case No. 2008-12 (Ga. SBE Nov. 2007). Thus, this alleged error is without merit.

D. Hearsay and the Record Evidence.

The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). "[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence." F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

In this case, the Student contends that the Local Board relied on hearsay.[3] At the hearing, two students testified. The first student testified that she had purchased marijuana from the Student in the school cafeteria right before spring break. The second student testified that on another occasion she had witnessed the Student give marijuana to another student in the school cafeteria. This testimony is admissible evidence and is not hearsay. Thus, the decision of the Local Board is supported by admissible evidence.

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[3] The record shows that the principal testified about a conversation with another student who allegedly purchased marijuana from the Student. This evidence does constitute hearsay. R.G. v. Henry County Bd. of Educ., Case No. 2008-27 (Ga. SBE, April 2008). However, as set forth above, admissible evidence exists in the record to support the decision of the Local Board.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This _________ day of September, 2009.

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WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS