STATE BOARD OF EDUCATION

STATE OF GEORGIA

LISA MORRIS, Appellant, v. WALTON COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1980-8

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETEMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Walton County Board of Education herein appealed from is hereby affirmed.

Messrs. McClung and Foster were not present.

This 8th day of May, 1980.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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LISA MORRIS, Appellant, vs. WALTON COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1980-8 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

Lisa Morris (hereinafter "Appellant") has appealed a decision by the Walton County Board of Education (hereinafter "Local Board") to expel her for the remainder of the 1979-1980 school year because she was in an off-limits area of school where marijuana was being smoked and sold. The appeal contests the sufficiency of the evidence and the severity of the punishment. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On January 16, 1980, the school principal, while on early morning rounds, saw smoke coming from

around the corner of the gymnasium. When he rounded the corner, he found six students in an unsupervised area of the campus. The students were clustered in a group smoking cigarettes. Upon seeing the principal, they dropped the cigarettes and began stamping them into the ground. One student ran. The principal smelled marijuana. The principal told the students to move to the wall of the gymnasium and had the area searched. Two recently smoked marijuana cigarettes and four unsmoked marijuana cigarettes, together with some loose money, were found on the ground where the students had been standing. Appellant denied she had been smoking, but upon later questioning in the schoolbuilding, she told the principal she had lit a marijuana cigarette and had given it to one of the other students. The principal did not see Appellant smoking any cigarettes and no cigarettes were found on her person. The smell of marijuana, however, was on Appellant's clothing and hair. The principal reported the matter to the juvenile authorities and notified the parents on January 18, 1980 that Appellant would be suspended. On January 31, 1980, there was a hearing before the Local Board, and it was determined that Appellant should be suspended for the remainder of the year. On February 13, 1980, a notice of the charges, a list of the witnesses and another hearing date was sent to Appellant's parents. A second hearing was held on February 20, 1980 and the

Local Board again handed down a decision to suspend Appellant for the remainder of the school year. An appeal was made to the State Board of Education on March 6, 1980.

PART III

CONCLUSIONS OF LAW

Appellant's primary ground for appeal rests on the argument that there was no probative evidence to establish that Appellant was smoking marijuana cigarettes, or had possession of marijuana cigarettes. The principal testified he did not see Appellant smoking, and did not find any cigarettes on her person. The principal did, however, testify that Appellant admitted she had lit one of the marijuana cigarettes and handed it another student. Appellant argues that such testimony was inadmissable hearsay and cannot be used as the basis for making a decision in the case. An admission, however, is admissable in evidence, Ga. Code Ann. §38-403, and "a witness may testify as to what he saw and heard in the defendant's presence." Moore v. State, 240 Ga. 210, 212 (1977). The admission, together with the facts that Appellant was in a tightly clustered group from which marijuana smoke was emanating, the discovery of the marijuana cigarettes on the ground, and the smell of marijuana on the clothing and hair of

Appellant, were sufficient evidence to permit the Local Board to reach the conclusion Appellant was smoking marijuana cigarettes in an unsupervised area of the school campus.

Appellant maintains that her situation is the same as that found in Stonecypher v. White Co. Bd. of Ed., Case no. 1979-3, where the board of education decision was reversed by the State Board of Education because there was insufficient evidence to establish that the student had been smoking. In Stonecypher, however, the student was not discovered with the group of students who were smoking, and there was testimony from another person who was present that the student had not been observed smoking a cigarette. There were also additional grounds for reversal in Stonecypher. The Hearing Officer, therefore, concludes that Stonecypher is distinquishable from the instant case.

Appellant also raises the issue that other students apprehended with controlled substances were not expelled from school and she has been denied equal protection of the laws. The evidence to establish this claim, however, related only to one other incident and it was not established that the circumstances were so substantially identical as to require identical treatment. In addition, the disposition of one case does not establish a pattern which would result in the determination that Appellant was denied equal protection

of the laws. The Hearing Officer, therefore, concludes that Appellant's expulsion does not result in a denial of equal protection.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local Board had sufficient evidence to make its decision and the decision was within the discretionary authority of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Walton County Board of Education be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer