

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

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| <b>C.T.,</b>                                   | : |                         |
|  | : |                         |
| <b>Appellant,</b>                              | : |                         |
|  | : |                         |
| <b>v.</b>                                      | : | <b>CASE NO. 2010-17</b> |
|  | : |                         |
| <b>GWINNETT COUNTY BOARD<br/>OF EDUCATION,</b> | : | <b>DECISION</b>         |
|  | : |                         |
| <b>Appellee.</b>                               | : |                         |

This is an appeal by C.T. (“Student”) from a decision by the Gwinnett County Board of Education (“Local Board”) suspending the Student from school and all school activities until May 22, 2010, with the option to enroll in the alternative school. The Student was required to attend the Creating Lasting Family Connections and complete forty hours of community service, which would allow her to return to her home school on January 1, 2010. The Local Board took these actions because it found that the Student violated Rule 7 of the Local Board’s Student Conduct Behavior Code by soliciting and receiving marijuana while on school grounds. For the reasons set forth below, this appeal is sustained because the record contains evidence supporting the decision of the Local Board.

**I. BACKGROUND**

The Student attends Brookwood High School. On May 14, 2009, the school administration received information implicating the Student in a marijuana transaction while at school. Based upon information from two other students, the Local Board charged the Student with violating Rule 7 of the Student Conduct Behavior Code for solicitation and receipt of marijuana, and violating Rule 8 for failure to follow written directions and local school rules or regulations. The Student requested a hearing, and the Local Board convened a hearing tribunal.

At the hearing, both the students who implicated the Student testified. The first student testified that on May 13, 2009, she informed the Student that another student had agreed to obtain marijuana for her. According to the first student, the Student responded, “Oh, can you get me some, too,” and then gave the first student five dollars. The first student then gave the second student her money and the money obtained from the Student and told her to purchase marijuana for both of them.

On May 13, 2009, the second student purchased the marijuana. On May 14, 2009, the second student gave the Student a baggie with marijuana in the locker room during first period. The Student kept the marijuana in her possession until third period, when she threw it away

because she became afraid she may get caught. The administration later learned about the second student's potential possession and distribution of drugs at school.

After hearing all the evidence, the hearing tribunal found that the Student violated Rule 7 of the Student Conduct Behavior Code for solicitation and receipt of marijuana. The hearing tribunal recommended suspending the Student from school until May 22, 2010, with the option to enroll in the alternative school. The Student was also required to attend the Creating Lasting Family Connections and complete forty hours of community service, which would allow her to return to her home school on January 1, 2010. The Local Board affirmed the decision of the hearing tribunal.

## **II. ERROR ASSERTED ON APPEAL**

### **A. Record Evidence.**

The Student contends that the decision is not supported by the evidence. The Local Board 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. 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 was charged with violating Rule 7 of the Student Conduct Behavior Code for solicitation and receipt of marijuana. The Student admitted to violating this Rule at the hearing because she received the marijuana at school. However, the Student denies purchasing the marijuana. According to the Student, the second student handed it to her. The Student further contends that she was scared, held onto it until third period, and then threw it in the trash. Thus, the Student admits possessing the marijuana while at school.

The Student further contends that the testimony of the two student witnesses is inconsistent, because they did not implicate the Student the first time they were questioned about this matter. Even assuming the Student's assertions are true, this Board does not consider these alleged inconsistencies dispositive of the relevant facts in this case.

The record evidence from the two students is consistent.<sup>1</sup> Specifically, the first student testified that she informed the Student that the second student had agreed to obtain marijuana for her. According to the first student, the Student responded, “Oh, can you get me some, too,” and then gave the first student five dollars. The first student then gave the second student her money and the money obtained from the Student and told her to purchase marijuana for both of them. The next day, the second student gave the Student a baggie with marijuana in the locker room during first period.

The Student denies that she solicited the marijuana, and that she gave the first student money because she asked for lunch money. The Student further contends that the marijuana was simply handed to her and she did not know what to do with it, but later threw it away. Thus, the Student is seeking for the State Board to accept her testimony instead of the two witnesses.<sup>2</sup> However, the hearing tribunal, as the finder of fact, was charged with weighing the evidence, including any inconsistencies, and credibility of the witnesses. As set forth above, this Board is required to affirm the decision of the Local Board if there is any admissible evidence to support the decision. The decision of the Local Board is supported by admissible evidence, and therefore must be affirmed.

#### **B. Level of Punishment.**

The Student asserts that the discipline she received is excessive. However, the notice issued to the Student stated discipline included punishment up to expulsion. “The State Board of Education . . . cannot adjust the level or degree of discipline imposed by a local board of education.” B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 1998). Thus, this Board cannot alter the Student’s discipline.

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<sup>1</sup> The Student contends that the testimony of the two students is hearsay. However, the witnesses’ testimony constitutes admissions by the Student, which is an exception to the hearsay rule. See O.C.G.A. § 24-3-31. Moreover, the Student did not raise a hearsay objection before the hearing tribunal, and it cannot be raised for the first time on appeal to the State Board. Hutcheson v. DeKalb Cnty. Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980). “The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board.” Z.G. v. Henry Cnty. Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall Cnty. Bd. of Educ., 251 Ga. 54 (1983).

<sup>2</sup> At oral argument, the Student asserted that she was not allowed to cross-examine the witnesses. However, the hearing tribunal possesses the authority to ensure that witnesses are properly questioned, which is what the hearing officer did in this case. Nothing in the record shows that the Student was denied the right to cross-examine witnesses. Moreover, the Student did not raise a hearsay objection before the hearing tribunal, and it cannot be raised for the first time on appeal to the State Board. Hutcheson, Case No. 1980-5; Z.G., Case No. 2007-05; Sharpley, 251 Ga. at 54.

### **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 October, 2009.

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WILLIAM BRADLEY BRYANT  
VICE CHAIRMAN FOR APPEALS