

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>W.H.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2011-45</b>
	:	
<b>GWINNETT COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by W.H. (“Student”) from a decision by the Gwinnett County Board of Education (“Local Board”) finding that the Student violated its rules by soliciting and possessing marijuana on school premises. For the reasons set forth below, this appeal is **SUSTAINED**.

**I. BACKGROUND**

The Student attends Dacula High School. The Student was charged with the solicitation and possession of marijuana while on school premises. The Student appealed the charges and was provided a hearing. At the hearing, the Student admitted that he violated the Local Board’s rules prohibiting the solicitation and possession of marijuana. Furthermore, at the hearing, another student testified that he asked the Student if he wanted any marijuana, and the Student responded “yes, yeah.” When the other student stated it would cost \$10.00, the Student stated he would bring it tomorrow. The other student further testified that he provided the marijuana to the Student.

After hearing all the evidence, the hearing officer found that the Student violated the Local Board’s rules regarding the solicitation and possession of drugs. The hearing officer did not impose any discipline because the Student is a special education student entitled to the protections of the Individuals with Disabilities in Education Act (“IDEA”). Thus, the Student was referred for an Individualized Education Program (“IEP”) meeting. The Local Board affirmed the decision of the hearing officer.

**II. ERROR ASSERTED ON APPEAL**

**A. Record Evidence.**

As an initial matter, the Local Board contends that because the hearing officer did not impose any disciplinary action against the Student, that this appeal must be dismissed. See J.J. v. Fulton Cnty. Bd. of Educ., Case No. 2007-54 (Ga. SBE, July 2008); D.B. v. Muscogee Cnty. Bd. of Educ., Case No. 2010-41 (Ga. SBE, March 2010). This Board agrees that it does not have

jurisdiction over questions related to the IDEA. Furthermore, because the Student did not receive any discipline, this Board cannot provide him any relief. Accordingly, this appeal is subject to dismissal.

Even assuming this appeal was not subject to dismissal, the Local Board's decision is 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 the Local Board's policy regarding the soliciting and possessing marijuana on school premises. The Student admitted to violating the Local Board's rules prohibiting soliciting and possessing marijuana on school premises. Thus, the decision of the Local Board is supported by admissible evidence.

### **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 April 2011.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS