

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. R.,	:	
	:	
Appellant,	:	CASE NO. 2011-52
	:	
vs.	:	
	:	
OCONEE COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by J. R. (Student) from a decision by the Oconee County Board of Education (Local Board) to expel him from regular school until the end of the 2010-2011 school year, with the option of attending alternative school during the period of expulsion, after finding him guilty of claiming some candy was a drug.¹ Appellant claims that the hearing officer erred in admitting the results of a field test and there was no evidence to support the decision. The Local Board’s decision is **SUSTAINED**.

On November 10, 2010, the Student was given a piece of hard candy by another student as they were entering a computer lab during second period. When he completed his assignment, the Student began scraping on the piece of candy with a paper clip. A student sitting beside him said he could probably sell the candy. The candy broke and the Student dropped it on the floor.

During third period, the Student accidentally stepped on a female student’s book bag. The female student became angry because her lap-top computer was in the bag. The two exchanged words over the incident.

Later in the day, the female student went to an assistant principal and reported that she had been in the second period computer lab with the Student and that the Student was carving on something with a blade. The female student claimed that when she asked what he had, the Student replied that it was ecstasy. Two assistant principals began investigating the matter. One principal searched the Student but did not find a blade or any drugs. The other principal found some residue on the floor of the computer lab in the area where the Student sat although there had been other classes in the lab in the interim period from when the Student was in the lab and when the search was made. A police officer conducted a field test on the residue and it tested positive for methamphetamine.

¹ The Local Board also gave the Student the opportunity to petition to return to regular school at the end of each nine-week grading period.

The Student was charged with being in possession of drugs on the school property and the matter was sent to a student disciplinary tribunal for hearing.

At the hearing, the police officer admitted that he had never before used a field test for methamphetamines. The Student objected to the introduction of the field test report, but the hearing officer allowed it to be introduced because he had been a college chemistry teacher and was familiar with field tests. The students who sat on the left and right of the Student in the computer lab testified that they saw the Student carving on the candy but did not hear him say anything about the candy being ecstasy. Both students testified that the female student sat across the room and they did not see her in their vicinity and did not hear her talking with the Student.

The hearing officer found the Student guilty of representing that he was in possession of a drug.² The hearing officer expelled the Student until the end of the second semester of the 2011-2012 school year with the option of attending an alternative school during the expulsion period. When the Student appealed to the Local Board, the Local Board reduced the punishment to expulsion until the end of the 2010-2011 school year with the option of petitioning for re-admission at the end of each nine-week grading period. The Student then appealed to the State Board of Education.

The Student claims that the hearing officer was biased, that because of the hearing officer's bias, he improperly admitted the field test, and there was no evidence to support the charge because the testimony of the female student was not credible. The Local Board claims there was no evidence of bias and that there was sufficient evidence to support the hearing officer's decision.

The Student's claim of bias on the part of the hearing officer is based upon the hearing officer's comment that he had been a chemistry teacher and was familiar with field tests. The fact that the hearing officer was familiar with field tests, however, does not establish bias. Although he objected to the introduction of the field test report, the Student did not show any evidence of actual bias on the part of the hearing officer.

The Student claims that there was no evidence that he violated the rules of the school. The Oconee Student Code of Conduct provides in part:

A student shall not possess ... any substance under the pretense that it is, in fact, a prohibited substance as described in this rule.

Code 07, Oconee County School Student Code of Conduct, p. 5, JCDA-E, 5/10/10.

² The substance found on the floor of the computer lab was tested by the Georgia Bureau of Investigation Crime Lab and found to not be a drug. This evidence, however, was unavailable at the time of the hearing and cannot be considered by the State Board of Education.

The only evidence that the Student represented the candy as a drug was the female student's testimony that the Student said he was carving on some ecstasy, which is, apparently, a slang term for some form of methamphetamine. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The Student claims that the testimony of the two students sitting beside him -- that the female student was not in their vicinity in the lab and they never heard him say anything about ecstasy -- belies her testimony about overhearing him say he had some ecstasy. The female student's testimony, however, was supported by one of the two students who sat beside the Student who testified that he overheard a part of a conversation that the female student reported. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was some evidence to support the Local Board's decision. Accordingly, the Local Board's decision is **SUSTAINED**.

This _____ day of May 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS