

other student counselors, Martz concluded that M.S. had smoked marijuana at the camp. When the student counselors returned to school on October 5th, Martz requested all eleven to provide urine samples to be tested for the presence of illegal substances. M.S. provided a sample, which was negative for the presence of any illegal substances.

Martz gave M.S. a three day out-of-school suspension and, subsequently, conducted an informal hearing. At the hearing, Martz advised M.S. of the charges against him, extended M.S.'s suspension an additional seven days and informed M.S. that a formal expulsion hearing would be held before the Board. At this formal hearing, Martz testified without objection from M.S. that two students told him that M.S. had used marijuana at the camp.¹ Relying on Martz's uncontroverted testimony, the Board found M.S. guilty of violating the District's policy and expelled M.S. from school.

M.S. appealed to the trial court, which, relying on *Walker v. Unemployment Compensation Board of Review*, 367 A.2d 366 (Pa. Cmwlth. 1976), concluded that the Board's finding that M.S. smoked marijuana was not supported by substantial evidence because the finding was based solely on the hearsay testimony of Martz. In so holding, the trial court noted that there was nothing in the record to corroborate the hearsay evidence, and, in fact, the evidence was contradicted by the negative results of the drug test. Accordingly, the trial court

¹ Martz testified "[s]o the evidence I had and why [M.S.] is here this evening and why he was suspended for ten days is because I had two students that said [M.S.], in fact, smoked marijuana." (R.R. at 17a.)

reversed M.S.'s expulsion and ordered his reinstatement as a student at Midd-West High School.

On appeal,² the District argues that there is substantial evidence in the record to support the Board's finding that M.S. smoked marijuana at a school-sponsored event, and, therefore, the trial court erred in reversing M.S.'s expulsion. According to the District, the existence of conflicting evidence, i.e., the negative drug test results, does not prevent Martz's testimony from constituting substantial evidence that supports the Board's finding. We disagree.

Initially, we note that the trial court did not base its decision on the presence of conflicting evidence but on the lack of evidence in the record to corroborate Martz's hearsay testimony.³ The rules regarding hearsay evidence in administrative proceedings were set forth in *Walker*. There, we stated that where hearsay evidence is properly objected to, it is not competent evidence to support a finding of fact. *Id.* However, where, as here, hearsay evidence is admitted without objection, the evidence will be given its natural probative effect and may constitute substantial evidence to support a finding of fact *so long as it is corroborated by*

² Our scope of review is limited to determining whether the trial court abused its discretion, committed an error of law or violated constitutional rights. *Burns by and through Burns v. Hitchcock*, 683 A.2d 1322 (Pa. Cmwlth. 1996).

³ Hearsay is an out-of-court statement, either oral or written, which is offered to prove the truth of the matter asserted. *Crouse v. Workmen's Compensation Appeal Board (Pennsylvania Liquor Control Board)*, 645 A.2d 310 (Pa. Cmwlth. 1994). Because the District relied upon the out-of-court statements made to Martz by the other students to establish that M.S. had, in fact, smoked marijuana at the camp, the trial court properly concluded that the District's evidence constituted hearsay.

any competent evidence in the record. Id. A finding of fact based *solely* on hearsay will not stand. *Id.*

The District maintains that Martz’s hearsay testimony is corroborated by his other testimony that he smelled marijuana on M.S. when he interviewed M.S. (District’s brief at 10-11.) However, despite a careful review of the record, we can find no such testimony. (R.R. at 15a-23a.) Indeed, like the trial court, we conclude that the record contains no competent evidence to corroborate Martz’s hearsay testimony that M.S. smoked marijuana in violation of the District’s policy, and, therefore, the Board’s finding based on that hearsay testimony may not stand. *Id.* Because the District offered no competent evidence to support its allegations against M.S., the trial court properly reversed the Board’s decision to expel M.S.

Accordingly, we affirm.

ROCHELLE S. FRIEDMAN, Judge

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: M.S. :
 :
 v. : No. 1069 C.D. 2008
 :
 :
 Mid-West School District, :
 :
 Appellant :

ORDER

AND NOW, this 19th day of December, 2008, the order of the Court of Common Pleas of the 17th Judicial District of Pennsylvania, Snyder County Branch, dated May 6, 2008, is hereby affirmed.

ROCHELLE S. FRIEDMAN, Judge