

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| C. S., | : | |
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| Appellant, | : | |
| | : | |
| vs. | : | CASE NO. 2001-37 |
| | : | |
| GWINNETT COUNTY | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | DECISION |

This is an appeal by C. S. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him until May 24, 2001 after he was found guilty of being involved in igniting a smoke bomb in the high school as part of a senior prank. The Student complains that it was a gross abuse of discretion to recommend long-term suspension and the tribunal composition was not stated on the record. The Local Board’s decision is sustained.

On January 9, 2001, the Student and some of his friends were in the lunchroom when someone suggested that it would be funny if someone set off a smoke or stink bomb in the high school. The following morning, two of the students brought a smoke bomb and lighter to school in a bag. They gave the bag to the Student before first period and he kept it until fourth period when he transferred it to another student in the group who then proceeded to light the bomb while surrounded by the Student and others in the group. The smoke bomb filled the halls with smoke that irritated the eyes of the student population and caused fire alarms to ring throughout the school. School officials determined there was no fire and avoided a call to the fire department, but there was considerable disruption of the student population.

When asked about his involvement in the incident, the Student initially said he was not involved. He later admitted his involvement and was charged with violating rule 1 – disruption and interference with school, rule 5 – behavior that could cause physical injury, rule 6 – possession of fireworks, rule 7 – possession of a lighter, and rule 11E – providing false information. At the hearing before the student disciplinary tribunal, the Student admitted he violated each of the charges. The tribunal then suspended him until May 24, 2001 with the opportunity to attend alternative school.

The Student appealed to the Local Board, which upheld the tribunal’s decision. The Student then appealed to the State Board of Education.

On appeal to the State Board of Education, the Student claims there was a gross abuse of discretion because the punishment he received was different than the punishment received by

some of the other students involved in the incident. Notwithstanding the fact that there is no evidence in the record of any disparate treatment, there are numerous reasons for the tribunal to dispense different punishment measures when students are jointly involved in an incident. Past disciplinary measures, degree of involvement, cooperation, opportunity to avert or avoid, premeditation, and mitigating circumstances are some factors that a tribunal might consider in arriving at different punishments when students seem to be similarly situated. In the instant case, the Student was charged with and pleaded guilty to providing false information, a charge that was not made against some of the other students. We cannot determine whether this alone was the reason for the tribunal's decision, but the decision was within the tribunal's authority. The State Board of Education, therefore, concludes that the tribunal did not abuse its discretion in suspending the Student until the end of the term.

The Student next claims that there is no showing on the record that the tribunal was properly constituted. There was no challenge to the tribunal's composition at the hearing. "If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made." *Hutcheson v. DeKalb Cnty. Bd. of Educ.*, Case No. 1980-5 (Ga. SBE, May 8, 1980). There is no statutory or case law requirement for the school system to affirmatively show on the record that the tribunal has been properly constituted. The State Board of Education concludes that the Student's claim that the tribunal was improperly constituted is without merit.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not abuse its discretion and acted within its authority in disciplining the Student. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of June 2001.

Bruce Jackson
Vice Chairman for Appeals