

STATE BOARD OF EDUCATION

STATE OF GEORGIA

K. S.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-42
	:	
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by K. S. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him until May 31, 2006, after finding him guilty of engaging in a physical altercation with another student. The Student claims that the school system failed to initiate progressive discipline, the punishment is too harsh, the discipline was racially motivated, and he was denied due process because an assistant principal, rather than the principal, presented the case to the tribunal. The Local Board's decision is sustained.

On November 7, 2005, the Student engaged in a shoving incident with another student after the two of them exchanged words while returning to their in-school-suspension class after using the restroom. The Student had received six previous disciplinary referrals since the beginning of the school year. The Student was charged with engaging in behavior detrimental to learning, exhibiting disrespect to other students, and making inappropriate physical contact.

After hearing the evidence, a student disciplinary tribunal found the Student guilty of the charges and expelled him until May 31, 2006. The Local Board upheld the tribunal decision and the Student appealed to the State Board of Education.

On appeal, the Student claims that the punishment is too harsh for the circumstances and that he should have been given progressive discipline. He also claims that the charges against him were made because of racial bias. Finally, he claims he was denied due process because an assistant principal, rather than the principal, presented the case against him.

The Student's first complaint is that the punishment was too harsh for the incident. The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998). "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of

discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. *See, Boney v. County Board of Education for Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); *Braceley v. Burke County Bd. of Ed.*, Case No. 1978-7." *Joseph M. v. Jasper Cnty. Bd. of Educ.*, Case No. 1981-40 (Ga. SBE, Feb. 11, 1982).

The Student claims that he should have been given some form of progressive discipline before being expelled from school. The record, however, shows that the Student was given in-school suspensions for several previous incidents during the school year. The Student was made aware that if he continued to engage in disruptive activities he was subject to being expelled from school. The State Board of Education concludes that the Student received progressive discipline before this incident and it was unnecessary for the Local Board to devise further disciplinary measures for the Student before expelling him.

The Student also claims that the charges against him were made because of racial bias. This issue was not raised during the hearing and there is no evidence in the record of any racial bias. "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). The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board. *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983).

Finally, the Student claims that the school system denied him due process because an assistant principal presented the case to the tribunal. The Student does not cite any law or case authority that would indicate a denial of due process because an assistant principal rather than a principal presents a case to a tribunal. Due process requires a notice of charges and the names of witnesses and their expected testimony. Additionally, the student must be given an opportunity to explain or present his or her defenses. *See, Dixon v. Alabama St. Bd. of Educ.*, 294 F.2d 150 (5th Cir., 1961). In the instant case, the Student received notice of the charges with a list of witnesses and their expected testimony, he was given an opportunity to examine and cross examine witnesses, and he was able to present his defenses. The State Board of Education concludes that the Local Board did not deny the Student any of his due process rights.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was within its authority and the Student was not deprived of any due process rights. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of March 2006.

William Bradley Bryant
Vice Chairman for Appeals