

STATE BOARD OF EDUCATION

STATE OF GEORGIA

L. W., :
:
Appellant, : **CASE NO. 2010-36**
:
vs. :
:
HENRY COUNTY :
BOARD OF EDUCATION, : **DECISION**
:
Appellee. :

This is an appeal by L. W. (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 from regular school until the end of the second semester of the 2009-2010 school year, with the option of attending alternative school during the period of expulsion, after finding him guilty of fighting. Appellant claims that evidence was improperly admitted at the tribunal hearing and improperly not provided to the Student's attorney on appeal. The Local Board's decision is sustained.

On September 25, 2009, the Student participated in a fight on school property. A friend of the Student started the fight by attacking another student. The Student then grabbed the other student's legs and caused him to fall to the ground. The Student then began kicking the victim while he was on the ground. When teachers tried to separate the combatants, the Student continued to press toward the victim. He then ran away from the scene and denied any participation in the affray when later questioned by school authorities. The Student finally admitted his involvement and was charged with physically abusing another.

At a hearing before a student disciplinary tribunal, the Student admitted his involvement in the fight. Two teachers also testified that they witnessed the Student kicking the other student while he was on the ground. The tribunal found the Student guilty and expelled him through the end of the second semester of the 2009-2010 school year, with the option of attending an alternative school during his expulsion. The Local Board upheld the tribunal's decision when the Student appealed. The Student then appealed to the State Board of Education.

On appeal, the Student claims that photographs of the victim were improperly admitted at the hearing before the tribunal and then improperly withheld from his attorney on appeal. The gist of the Student's claim appears to be that he was denied procedural due process either because the pictures were admitted or because they were

not supplied to his attorney or both. The record, however, does not support the Student's claim.

During the hearing, there was no objection made about the introduction of the photographs. "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). There is no evidence contained in the record that the school system failed to provide the photographs to the Student's attorney, i.e., there is no correspondence from the attorney that states the photographs were not included in the copy of the record provided to the Student to prosecute his appeal. The State Board of Education can only review evidence contained in the record. See, *Deangel E. v. Coffee Cnty. Bd. of Educ.*, Case No. 1991-21 (Ga. SBE, Sep. 12, 1991).

There was substantial evidence to support the tribunal's decision without consideration of the photographs of the victim. The Student admitted that he caused the victim to fall to the ground and that he then kicked the victim. Two teachers also testified that they saw the Student kick the other student. "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, *Ransom 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).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and that the Local Board did not deny the Student any due process rights. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of February 2010.

William Bradley Bryant
Vice Chairman for Appeals