

STATE BOARD OF EDUCATION

STATE OF GEORGIA

STEVEN D.,)	
)	
Appellant,)	
)	CASE NO. 1985-19
v.)	
)	
GWINNETT COUNTY BOARD)	
OF EDUCATION,)	
)	REPORT OF STATE
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Steven D. (hereinafter "Appellant") from a decision of the Gwinnett County Board of Education (hereinafter "Local Board") increasing the punishment from the punishment imposed by a Disciplinary Hearing Panel (hereinafter "Panel") to exclude the Student from the regular schools under the jurisdiction of the Local Board permanently and to exclude the Student from the alternative school or adult high school until at least April 15, 1986. Appellant contends it was error for the Local Board to increase the punishment because the Local Board violated its own rules, the Panel's decision should have been upheld, and the action of the Local Board denied Appellant due process of law as guaranteed under the Constitution of the United States and the Constitution of the State of Georgia. The Local Board contends it has the authority to hear, on its own motion, a case which has been decided by

the Panel and impose a harsher punishment than the punishment imposed by the Panel. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

The Student in this case is a seventeen year old who fired a .38 calibre pistol numerous times at the school principal's van while it was parked at the principal's house. The Panel met to consider whether the Student was in violation of school rules prohibiting the disruption of the orderly process of school and damaging private property belonging to a school employee. The Student admitted he had committed the offense and the Student's attorney stipulated that the Student was guilty of violating the school rules. An attempt to seek leniency was made by producing character witnesses on the Student's behalf. At the conclusion of the hearing, the Panel determined that the Student should be suspended for one calendar year and that he would be eligible for the alternative school during the meantime. This decision was issued April 24, 1985 and the Student did not appeal this decision to the Local Board.

The Local Board decided, on its own initiative, to review the record of the hearing before the Panel. The Board met on May 8, 1985 and concluded that the violations of the rules were proved at the hearing and modified the punishment to

exclude the Student from the regular public schools under the jurisdiction of the Local Board and to exclude the Student from the alternative school, except that he was allowed to apply for admission to either the alternative school or adult high school, provided that no such application would be accepted for consideration earlier than April 15, 1986. The Student did not attend that board meeting.

This appeal was filed May 30, 1985.

PART III
DISCUSSION

The Student has appealed the decision of the Local Board expelling him permanently from the regular schools and from the alternative school for at least one year. The Local Board made that decision at a meeting on May 8, 1985. This appeal is made to the State Board of Education under the authority of O.C.G.A. §20-2-1160 which provides in pertinent part:

(b) Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education.

The record submitted consists of the tapes and evidence presented to the Panel, the notes and letters concerning the Panel's decision, Local Board policy JCD on student behavior, a summary of another student's disciplinary appeal decision, a letter brief by the Local Board attorney concerning the authority of the Local Board to review the action of the Panel, a summary of the action by the Local Board with respect to the Student, and a letter notifying the parents of this action.

Appellant raised, in his letter of appeal and brief, various issues alleging that the Local Board violated its own rules, state law, and denied the Student due process. The record does not reflect that any of these issues were raised before the Local Board for consideration by the Student nor that the Local Board considered these issues. The Local Board did receive a letter brief from its own attorney which addressed some of these issues but the Student did not appear at the board meeting to raise these issues and the record does not reflect that the issues were considered by the Local Board.

The State Board of Education is unauthorized to consider on appeal issues which were not raised before the Local Board. Numerous decisions of the Georgia Supreme Court have spoken to the authority of the State Board of Education in considering appeals. In Boney v. County Bd. of Ed., 203 Ga. 152 (1947), the Court stated that the State Board of Education was a tribunal with limited jurisdiction for hearing appeals and matters essential to its jurisdiction must appear on the face of its decision. The Court further stated that, where the decision of the State Board of Education shows that there was before it no decision of a county board rendered after hearing objections or complaints, the State Board of Education was without jurisdiction and its decision was a nullity. Similarly, in Owen v. Long County Bd. of Ed., 245 Ga. 647 (1980), the court concluded

the State Board of Education was without jurisdiction to consider a question of bias on the part of the Local Board of Education because there was no issue heard and decided by the county board and, therefore, there could be no parties and no testimony which the law contemplates. The Court concluded:

It necessarily follows that an aggrieved party's list of contentions, submitted to the State Board on appeal, must relate to contested issues at the hearing below and cannot raise new issues.

See also, Sharpley v. Hall County Bd. of Ed., 251 Ga. 54 (1983).

Based upon the fact that all issues raised on appeal are issues which were not raised and considered before the Local Board and the legal requirement that the State Board of Education is without jurisdiction to consider issues raised on appeal which were not raised before the Local Board, the State Board of Education cannot consider the issues raised by the Student. Because none of the issues raised by the Student on appeal can be considered by the State Board of Education, no issues warranting reversal of the Local Board's decision are before the State Board and the decision of the Local Board must stand.

On a final note, the Student has argued that the Local Board action was illegal and that the Local Board lacked jurisdiction to make its decision. Whether there are remedies available to the Student in the event that his argument is legally correct is something which this Hearing Officer does not address

in this decision because of the limited jurisdiction of the State Board of Education. The only way the State Board of Education could consider those arguments is if properly argued before the Local Board and then appealed to the State Board of Education.

PART IV

CONCLUSION

Based upon the foregoing, the record submitted, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion the State Board of Education lacks jurisdiction to decide all of the issues raised on appeal by the Student and, therefore, must affirm the decision of the Local Board.

L. O. Buckland

L. O. BUCKLAND
State Hearing Officer