STATE BOARD OF EDUCATION

STATE OF GEORGIA

JEREMY S.,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1995-19**
vs.	:	
	:	**DECISION**
WHITFIELD COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Jeremy S. (Student) from a decision by the Whitfield County Board of Education (Local Board) to uphold a January 18, 1995, decision of a Student Disciplinary Tribunal to suspend him for the remainder of the 1994-1995 school year after finding him guilty of possessing marijuana on campus. The Student claims that the punishment is too harsh and that he is being denied his constitutional rights to a free public education. The Local Board's decision is sustained.

On January 9, 1995, the Student, a seventeen-year-old ninth-grader, was found in a car in the school parking lot with a small quantity of marijuana. He admitted that he had been smoking a marijuana cigarette. The Student was charged with "cumulative violations." A Student Disciplinary Tribunal conducted a hearing on January 18, 1995, to consider the charges. The Student admitted he had been smoking marijuana. The Student Disciplinary Tribunal found him guilty of six disciplinary violations and decided to allow him to take his final tests for the six-week period and suspend him for the remainder of the 1994-1995 school year. On February 17, 1995, the Local Board upheld the Student Disciplinary Tribunal's decision. The Student then appealed to the State Board of Education.

On appeal, the Student claims that: (1) the suspension was arbitrary and violates his right to substantive due process because he is being punished for factors over which he did not have any control and the punishment is excessive for the offense committed; (2) the decision violates his constitutional right to an adequate education; (3) the decision violates federal law because it denies him educational services on the basis of his handicap or disability; (4) the decision was based upon a process that violated his rights to procedural due process because the disciplinary rule is too vague; (5) the decision violates his right to equal protection under law, and (6) there was no evidence to support the charges.

A fundamental problem with the issues raised by the Student's appeal is that none of the issues were raised before the Student Disciplinary Tribunal. The Student admitted he was guilty of possessing marijuana and of committing six offenses under the Local Board's student discipline code. Without having to determine guilt, the Student Disciplinary Tribunal then considered the Student's record and his request to go to an alternative school. The Tribunal decided against the alternative school and voted for long-term suspension for the remainder of the 1994-1995 school year. Issues that have not been raised at the hearing cannot later be raised

before the State Board of Education. See, Walton v. Upson Cnty. Bd. of Educ., Case No. 1985-13 (Ga. SBE, Oct. 10, 1995).

"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. Ransum 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). As argued by the Local Board, the only issue is whether the discipline imposed is proportionate to the offense.

The Local Board's system of discipline provides for a series of disciplinary measures for offenses against the student discipline code. For the first offense, the student is counseled. A conference is held with the parents after the second offense. After the third, fourth, and fifth offenses, a student is assigned to varying lengths of in-school suspension. Following the sixth offense, a recommendation is made for long-term suspension or expulsion. Thus the Local Board has attempted to give the Student every opportunity to conform his actions to acceptable standards of conduct.

Suspension for one semester cannot be said to be inherently disproportionate to the offense of possessing and smoking marijuana on school grounds. "The control and management of the public schools constitutionally rests with the county board of education and such control and management will not be interfered with except where that control and management is contrary to law. See, Colson v. Hutchinson, 205 Ga. 559, 67 S.E.2d 764 (1951); Boney v. County Board of Education for Telfair County, 203 Ga. 152 (1947)." Martinius C. v. Griffin-Spalding County Bd. of Educ., Case No. 1992-12 (Ga. SBE, Jul. 9, 1992). The Local Board has the authority to suspend the Student for a long-term. O.C.G.A. § 20-2-755. The State Board of Education, therefore, concludes that the suspension was not disproportionate to the offense, nor is it contrary to law.

The Student's basic complaint is that he has been involved in so many disciplinary matters that it should be evident that he is suffering from a disability and should be receiving special education services. The Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 et sea. (IDEA), contains provisions for the identification and eligibility for special education services. There was, however, no evidence presented during the hearing concerning the Student's eligibility for special education services under IDEA, nor was there any evidence that the Local Board has failed to comply with the provisions of IDEA.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board's decision is neither too harsh, nor is it contrary to law. The Local Board's decision, therefore, is
SUSTAINED.

This 11th day of May, 1995.

Mrs. King, Mr. Sessoms and Mr. Williams were not present.

Robert M. Brinson
Vice Chairman for Appeals