

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MADISON L,	:	
	:	
Appellant,	:	
	:	CASE NO.1995-50
vs.	:	
	:	DECISION
BURKE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Madison L. (Student) from a decision by the Burke County Board of Education (Local Board) to affirm the decision of a Student Disciplinary Tribunal to permanently expel the Student after finding that he brought a loaded .32-caliber pistol on campus. The Student claims he was denied due process and that the decision is too harsh. The Local Board's decision is sustained.

On September 11, 1995, the Student, a 10-year-old fourth grader, stole a .38-caliber pistol while on his way to catch a bus to school. Before getting on the bus, the Student fired the pistol at a tree. Some of the other students refused to board the bus and reported the incident to their parents. The parents talked to a policeman, who notified the Student's school about the situation. When the Student arrived at school, the principal met him. The policeman arrived at the school and the Student admitted he had a pistol in his book bag. The policeman removed the pistol from the book bag and extracted three live rounds of ammunition and two spent cartridges from the pistol. The Student said he stole the gun because two other students were harassing him.

On October 11, 1995, a Student Disciplinary Tribunal met and heard the evidence. The Student's parents did not attend the hearing and the Student was not represented by counsel; only an older sister attended with him. The Student did not raise any issues or present any evidence, except to admit that he stole the gun, fired it, and took it to school. The Student Disciplinary Tribunal decided to permanently expel the Student. The Student appealed to the Local Board and claimed that permanent expulsion was too harsh because of his age. The Local Board voted to affirm the Student Disciplinary Tribunal's decision. The Student then appealed to the State Board of Education.

On appeal, the Student claims (1) permanent expulsion violates his right to a free, public education, (2) he did not receive notice that permanent expulsion was a possibility; (3) the decision was unreasonable; (4) the Local Board failed to follow its own policies and state law, and (5) permanent expulsion is not authorized by state law. The Local Board argues that the

Student failed to raise any of the claims, except for the reasonableness claim, when the case was presented to it, and the Student cannot raise the claims for the first time on appeal. The Student argues that the issues were raised in lay terms when the Student's sister stated that he should not be expelled because of his age.

“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. *See, Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983). In the instant case, the Student did not raise any constitutional issues before the Local Board. While we can appreciate some latitude in interpreting what a lay person is attempting to say or do, we cannot stretch a statement that age should preclude expulsion as a statement that expulsion is a denial of the right to a free, public education, or that notice was improper, or that the Local Board failed to follow its own policies, or that expulsion is not authorized by state law. The statement only raises the issue of whether expulsion is reasonable in the circumstances. The State Board of Education, therefore, concludes that it has jurisdiction to only consider whether expulsion is authorized and reasonable.

The expulsion of a student who brings a loaded gun on campus with the intent to harm other students is authorized and reasonable. The Public School Disciplinary Tribunal Act provides for expulsion, which is defined as “expulsion of a student ... beyond the current school quarter or semester.” O.C.G.A. § 20-2-751(1). Local boards of education are authorized to establish procedures to impose suspension or expulsion. O.C.G.A. § 20-2-752. In addition,

Each local board of education shall establish a policy requiring the expulsion from school for a period of not less than one calendar year of any student who is determined ... to have brought a weapon to school.

O.C.G.A. § 20-2-751.1(a) (Michie, 1995 Cumin. Suppl.). Expulsion, therefore, is clearly authorized.

The Student, however, argues, that the expulsion authorized by the statute does not include permanent expulsion. As outlined by the Student, the State of Georgia has made it a matter of public policy that a free, public education should be given to its citizens. The Georgia Constitution establishes the foundation by providing, “The provision of an adequate public education for the citizens shall be a primary obligation of the State of Georgia.” *Art. 8, Sect. 1, Par. 1, Constitution of the State of Georgia of 1983*. “[Having extended to all children in Georgia the right to an education, the State cannot arbitrarily withdraw that right.” *Wells v. Banks*, 153 Ga. App. 581, 583, 266 S.E.2d 270 (1980). The Student's arguments, however, fail to establish that a student cannot be permanently expelled from school.

O.C.G.A. § 20-2-752 provides for expulsion “for a period of not less than one calendar year....” We have previously held that this language permits a local school system to permanently expel a student. *See, e.g., Dana B. v. Clarke Cnty. Bd. of Educ.*, Case No. 1994-56 (Ga. SBE, Nov. 10, 1994). The Local Board's policies in the instant case also provide that a student can be

expelled for a minimum of one school year. The use of the qualifier “minimum” contemplates that expulsion should be for at least a year, and leaves expulsion for any greater period to the discretion of the local board of education. The State Board of Education, therefore, concludes that a local board of education can permanently expel a student who brings a weapon on campus.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board had the authority to permanently expel the Student. The Local Board’s decision, therefore, is
SUSTAINED.

This 14th day of March, 1996.

Ms. Braswell, Mrs. King, Mr. Sessoms and Dr. Thomas were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals