

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. W., :
 :
 :
 Appellant, :
 :
 Vs. :
 : **CASE NO. 1997-47**
 :
 : **DECISION**
 :
 HENRY COUNTY :
 BOARD OF EDUCATION, :
 :
 :
 Appellee. :

This is an appeal by J. W. (Student) from a decision by the Henry County Board of Education (Local Board) to modify a student disciplinary tribunal decision and expel him from school for one year and to permit him to attend an alternative school after the student disciplinary tribunal found him guilty of discharging explosives at a football game and permanently expelling him. The Student claims that he was improperly charged, that he was improperly denied the benefit of counsel, and that the punishment was too harsh. The Local Board's decision is sustained.

This case is a companion to and factually the same as the case of *K M v. Henry County Board of Education*, Case No. 199746 (GA. SBE, Feb. 12, 1998). Except for the claim that he was denied the benefit of counsel, the Student's claims are the same as the claims made by K. M. Both students were involved in discharging several rockets into a crowded football stadium during a football game.

After being notified of his right to have counsel present at a hearing before a student disciplinary tribunal, and after the hearing started, the Student asked for a continuance to permit him to obtain counsel. The Student, however, had previously acknowledged that he had received notice of his right to have counsel and that he wanted to proceed and that he had consulted with an attorney before the hearing. The Student waived his right to have counsel by waiting until after witnesses had presented their testimony before asking for a continuance and by electing to proceed with the hearing with knowledge that he had the right to have counsel present. The Student did not raise this issue before the Local Board. "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). The State Board of Education, therefore, concludes that the Student was not denied due process when the student disciplinary tribunal decided to proceed after the Student asked for a continuance to obtain counsel.

The Student claims that there was no evidence that he was involved in the incident. This claim, however, is without merit because the Student did not raise this claim before the Local Board and admitted his involvement in the incident before the Local Board.

The Student claims that he was charged with possession of an explosive compound under the provisions of O.C.G.A. § 16-7-63, which was repealed by the Georgia Legislature effective May 1, 1996. As we held in *K M*, the Student was not charged with violating a state law, but with violating a Local Board policy that prohibits the possession or control of an explosive compound, which includes firecrackers, fireworks, missiles, or any other type of explosive device. Henry County School System Student Handbook, Grades 6 -12, 1997-1998 School Year, Pages 12, 20. The Student's claim, therefore, is without merit.

The Student also claims that he was denied due process because he was limited in calling character witnesses on his behalf. This issue was not raised before the Local Board and cannot be raised before the State Board of Education for the first time.

Finally, the Student claims that the punishment imposed is too harsh under the circumstances. "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 Local Board of Education was authorized to expel the Student for his actions. Although the Student argues that nobody was injured, the possibility of injury existed. The Local Board's decision, therefore, does not constitute an abuse of discretion.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student any of his due process rights, that there was evidence to support the Local Board's decision, and that the Local Board's decision was not arbitrary or capricious. The Local Board's decision, therefore, is
SUSTAINED.

Mr. Larry Thompson, Vice Chair for Appeals, was not present.

This 12th day of March, 1998.

Johnny Isakson, Chair
State Board of Education