

STATE BOARD OF EDUCATION

STATE OF GEORGIA

D. C.	:	
	:	
Appellant,	:	
	:	CASE NO. 1998-12
vs.	:	
	:	DECISION
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by D. C. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to expel him from regular classes at Gwinnett County Schools until January 5, 1999 because of chronic misbehavior. The Local Board gave the Student the opportunity to attend its alternative school during the expulsion period. The Student claims that the decision was erroneous because the Local Board failed to consider his physical condition, the principal failed to follow the procedures contained in O.C.G.A. § 20-2-765, and the panel improperly characterized the expulsion as a long term suspension. The Local Board's decision is sustained.

Between September 1997 and January 1998, the Student was referred fourteen times for thirty-four incidents of misconduct. On October 7, 1997, he was given notice that he would be charged with a Rule 12 violation for future infractions. The Local Board's Rule 12 provides that a student who is chronically disruptive may be charged with repeated violations of school rules and may be referred to a student disciplinary tribunal. The Student's mother was also notified by telephone on October 7, 1997 that the Student was given the Rule 12 notice.

On January 16, 1998, a teacher referred the Student to an assistant principal at Norcross High School for disrupting her classroom and failing to follow directions. The Student was charged with violating the Local Board's Rule 1(d), disruption of school, and Rule 8, disregard of directions. Because of the earlier Rule 12 notice, the Student was also charged with violating Rule 12.

During the hearing before the student disciplinary tribunal, which was held on January 27, 1998, evidence of the numerous discipline referrals was submitted. There was also evidence presented that the Student swore at his teachers and that he took a disciplinary slip off the teacher's desk on January 16, 1998. The Student claimed that the teachers did not like him, that he had hypoglycemia and needed to eat in class, and that the lack of food caused him to fall asleep and be irritable when awakened.

The student disciplinary tribunal found the Student guilty of the charges and expelled him from all regular classes until January 5, 1999. The tribunal gave the Student the opportunity to attend an alternative school during the expulsion period. The Student appealed to the Local Board on the grounds that (1) the provisions of O.C.G.A. § 20-2-764 had not been followed; (2) the school system failed to have witnesses available, and (3) the punishment was too harsh because the Student has problems with transportation to the alternative school.

On February 12, 1996, the Local Board voted to uphold the student disciplinary tribunal's decision. The Student then filed an appeal with the State Board of Education.

In his appeal to the State Board of Education, the Student claims that the provisions of O.C.G.A. § 20-2-765 were not observed, that the suspension exceeds the legal limit, and that the Local Board ignored his physical condition.

The Student claims that O.C.G.A. § 20-2-765 was not followed because his parents were not notified that he presented a disciplinary problem and was being placed on a disciplinary plan. The record, however, shows that the school system notified the Student's mother by telephone on October 7, 1997 that the Student was being placed on a disciplinary plan.

O.C.G.A. § 20-2-765 directs that the parents of students should be given an opportunity to be involved in the preparation of disciplinary plans when students present a chronic disciplinary problem. The statute does not grant students any substantive rights if the procedures are not followed. Although the Student claims that the statute was not followed, the evidence shows that the school system substantially complied with all of its essential elements. When the Student was identified as a chronic discipline problem student, the school system prepared a disciplinary intervention plan, which the Student signed. The Student's mother was notified by telephone and she met with the assistant principal. The State Board of Education, therefore, concludes that the school system did not violate the provisions of O.C.G.A. § 20-2-765.

Notwithstanding the provisions of O.C.G.A. § 20-2-765, the Student was also charged with and found guilty of disrupting the classroom and disobeying the instructions of his teachers. The Local Board of Education could have imposed disciplinary measures against the Student based upon these charges alone, without regard to whether the Student also violated the Local Board's Rule 12.

The Student cited O.C.G.A. § 20-2-764 before the Local Board and O.C.G.A. § 20-2-765 before the State Board of Education. Based upon the Student's arguments before the Local Board, the Student will be deemed to have raised the issue of compliance with O.C.G.A. § 20-2-765 before the Local Board.

The Student claims that the Local Board erred by failing to consider his hypoglycemia in making its decision. The Student also claims that the student disciplinary tribunal was unauthorized to characterize the expulsion as a long-term suspension under the provisions of O.C.G.A. § 20-2-751. These issues, however, were not raised 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’s failure to raise these issues bars him from raising them on appeal.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision and the Student was not denied any due process rights. Accordingly, the Local Board’s decision is SUSTAINED.

Dr. Bill Grow, Mrs. Barbara Archibald, Ms. Willou Smith and Dr. Brenda Fitzgerald were absent.

This 10th day of June 1998.

Larry Thompson
Vice Chairman for Appeals