

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>J. B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1998-14</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>PEACH COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by J. B., an eighth grade student at Fort Valley Middle School, from a decision by the Peach County Board of Education to expel him through the first nine weeks of the 1998-1999 school year after finding him guilty of selling drugs on campus. The Student contends that he was denied procedural due process, that the evidence did not support the charges, and that the Local Board exceeded its authority. The Local Board's decision is sustained.<sup>1</sup>

Following an unsuccessful search for drugs in the Fort Valley Middle School, the principal learned that a student was seen placing a bag in his mouth. Upon questioning, the student said he received a packet of marijuana from J. B. on the morning of January 28, 1998 while they were at the bus stop. The principal charged J. B. with violating the Local Board's rule 3.02, which prohibits the unauthorized possession, transfer, use or sale of drugs or drug paraphernalia. The Local Board conducted a hearing on February 12, 1998.

During the hearing, the Student admitted giving the other student the drugs while they were at the bus stop waiting to go to school. A police officer testified that the Student admitted that he gave drugs to the other student. The Local Board found the Student guilty of violating Rule 3.02 and expelled him from school until the end of the first nine-week period of the 1998-1999 school year. The Student then filed an appeal to the State Board of Education.

On appeal, the Student claims that (1) the notice of the hearing was improper; (2) the Local Board's decision was based on hearsay evidence, and (3) there was no evidence that he had drugs at a school bus stop.

The Student claims that the notice of the hearing was improper because it did not give him notice of how he violated the rule and it did not identify all the witnesses that testified against him. In the notice of the hearing, the Student was only told that he had violated Rule 3.02, without any particulars concerning how or when he had violated the rule. In addition, the notice identified only two witnesses and did not identify the police officer that testified against him.

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<sup>1</sup> The Student requested oral argument in this case, but the request was made more than ten days after docketing. Oral arguments, therefore, were not heard.

The purpose of notice is to permit an accused to prepare a defense. The Student claims that by limiting the notice to only informing him that he had violated Rule 3.02 did not provide him with sufficient information to permit him to prepare a defense. In *Damon P. v. Cobb Cnty. Bd of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993), the State Board of Education reversed the decision of the local board when the charge notice only said the student had violated a rule prohibiting gang activity. In *dicta*, however, the State Board of Education said that when the notice concerned a narrowly defined activity, notice of a violation of the rule might be sufficient notice. In the instant case, the Student was charged with the violation of a rule that is quite specific, i.e., use or possession of illegal drugs, and he was questioned about the violation before the charge was made. Under these circumstances, the State Board of Education concludes that the Student was made sufficiently aware so that he could prepare a defense.

The Student also claims that the notice was improper because it did not identify the police officer that testified against him. This issue was not raised before the Local Board and, therefore, cannot now be raised before the State Board of Education. "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 testimony of the police officer did not add anything more than what the Student admitted during the hearing. Thus, even if the failure to list the officer as a witness was an error, it was a harmless error.

The Student claims that there was no evidence that the transaction occurred at a bus stop. During the hearing, however, the Student admitted that he gave drugs to another student at the bus stop while they were waiting for the bus. The Student's claim, therefore, is without merit.

The Student also complains that the Local Board's decision was based upon hearsay evidence. Although hearsay evidence was permitted, the record shows direct evidence, through the Student's own testimony, that the transfer of drugs occurred on school property. The Local Board's decision, therefore, did not rest solely on hearsay evidence.

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

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

This 10<sup>th</sup> of June 1998.

Larry Thompson  
Vice Chairman for Appeals