

STATE BOARD OF EDUCATION

STATE OF GEORGIA

K. K.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2000-4
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by K. K. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until May 30, 2000, with an option of attending an alternative school and the opportunity to return to his regular school on April 17, 2000 if he completed 40 hours of community service. The tribunal's decision followed the Student's admission that he had been involved in the beating of another student. The Student contends that he was denied due process and that the punishment was too severe. The Local Board's decision is sustained.

This case arises out of the same incident described in *L. W. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2000-3, decided with this case. The Student was one of three who attacked another student just after the victim exited from a school bus at the end of the school day.

Before the student disciplinary tribunal hearing, the Student's father wrote a letter in which he asked some procedural questions. In a separate letter, the Student's father asked for subpoenas. At the end of the hearing, when it appeared that the hearing was concluded, the tape recorder was turned off and then turned back on when the Student's father began asking additional procedural questions. The Student's father also registered a complaint that school officials had informed them that they did not need a lawyer present at the hearing

On appeal to the State Board of Education, the Student complains that the school system denied him due process:

1. In telling him that he did not need a lawyer present;
2. By not answering his inquiries about the hearing procedures;
3. By having an attorney present at the hearing after telling him he did not need to have an attorney present, and
4. By turning off the tape recorder during the proceedings.

Additionally, the Student claims that the punishment was too harsh considering his class standing and lack of any prior disciplinary problems.

The Student was given notice of the charges against him and of his right to employ an attorney, to confront witnesses, and the right to obtain subpoenas. The Student admitted that he participated in the beating and gave a written statement about his involvement. The only issue before the tribunal was the degree of punishment to be imposed. The Student was permitted to introduce character witnesses and other mitigating testimony. Thus, none of the points raised on appeal by the Student resulted in any harm to the Student.

The Student was informed of his right to have an attorney present. If an administrator expressed a personal opinion that the Student did not need an attorney, such an expression did not deny the Student any due process rights. The State Board of Education concludes that the Local Board did not deny the Student the right to have an attorney present.

The Student claims he was denied due process because his questions about the hearing procedures were not answered. The record, however, shows that all of the Student's questions were answered, either in writing before the hearing or by the hearing officer at the beginning of the hearing. The Student did not raise any additional questions at the hearing. The State Board of Education, therefore, concludes that the Student's claim that he was denied due process because his procedural questions were unanswered is without merit.

The Student complains that he was denied due process because the Local Board had an attorney present after a school official told him it was unnecessary for him to have an attorney present. The Student has not cited any case that prevents a local board from having an attorney present if a student does not have an attorney present. The Local Board's attorney did not participate in the tribunal's deliberations concerning the Student's punishment. The State Board of Education concludes that the Student was not denied due process because the Local Board's attorney attended the proceedings.¹

The Student next argues that he was denied due process because the tape recorder was turned off during the proceedings. The record, however, shows that the proceeding had concluded and the tribunal was preparing to hear evidence about another student when the Student's father began asking another question about the proceedings. The Student did not register any objection about the tape recorder and did not attempt to make any statement about what was said while the recorder was turned off. This issue was 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 Student also claims that the punishment imposed by the Local Board was too harsh because of his class standing and lack of any previous disciplinary incidents. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in

¹ The hearing was a joint hearing for all of the students and the Local Board's attorney attended because one of the students was represented by an attorney.

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 fact that the Student had an outstanding academic record does not remove the fact that he participated with two other students in kicking and beating another student. The State Board of Education concludes that the Student's claim of harshness is without merit.

Based upon the foregoing, it is the opinion of the State Board of Education that the Student was not denied due process and the Local Board's decision was not arbitrary or capricious. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of May 2000.

Bruce Jackson
Vice Chairman for Appeals