

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>Mi. P.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2000-31</b>
	:	
<b>DEKALB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	
	:	
<b>Ma. P.</b>	:	<b>CASE NO. 2000-32</b>
	:	
<b>vs.</b>	:	
	:	
<b>DEKALB COUNTY</b>	:	
<b>BOARD OF EDUCATION</b>	:	<b>DECISION</b>

This opinion covers the appeals of both Mi. P. and Ma. P. (Students), who are brothers and twins, from decisions by the DeKalb County Board of Education (Local Board) that involved the same incident. The Students were involved in a fight on school grounds after school. Mi. P. was found guilty of battery, aggravated battery, school disturbance, and violation of probation and expelled until the end of the first semester of the 2000-2001 school year, with the option of attending alternative school. Ma. P. was found guilty of simple battery, bystander battery, and school disturbance, but the Local Board suspended him for only two days after the Local Board's decision was made. Both Students claim that the hearing before a student disciplinary tribunal was procedurally defective, they were denied due process, the witnesses were unbelievable, and the evidence did not support the charges. The Local Board's decision in each case is sustained.

On February 29, 2000, A. L., a student in the school the Students attended, asked another student to obtain a piece of pizza for him. When the other student returned to campus, he did not have any pizza. A. L. began questioning him about the pizza and Mi. P. became involved in the discussion. The discussion became heated and Mi. P. and A. L. began exchanging blows. Ma. P. then entered the fray and also began hitting A. L.

A student disciplinary panel found Mi. P. guilty of battery, aggravated battery, school disturbance, and probation violation. The tribunal expelled him through the end of the first semester of the 2000-2001 school year with the option of attending alternative school. The tribunal also provided an opportunity for return to school at mid-semester. The Local Board upheld the tribunal's decision when the Student appealed.

The same student disciplinary panel found Ma. P. guilty of simple battery, bystander battery, and school disturbance. The tribunal expelled him through the end of the 1999-2000 school year, but, on appeal, the Local Board reduced the suspension period to run through April 20, 2000, thus permitting Ma. P. to return to school two days after the Local Board made its decision.

The Students filed timely appeals to the State Board of Education. The Students claim that:

1. The assistant principal should not have conducted the investigation of the incident because A. L.'s mother was a teacher at the school;
2. The assistant principal was permitted to testify when all of the witnesses were present;
3. A. L. started the fight, but was not charged with any wrongdoing;
4. A. L. could not identify whether Mi. P. or Ma. P. was the first one involved in the fight;
5. Mi. P. acted only in self-defense;
6. The hearing officer denied the Students the right to cross examine witnesses and improperly admitted pictures of A. L.;
7. The Local Board reduced the punishment of Ma. P. without giving any reason;
8. Mi. P. was denied due process because his prior record was admitted before his guilt or innocence was determined;
9. The alternative school principal said he would recommend Mi. P.'s reassignment back to regular school, and
10. The tribunal proceeding should not have been held because the assistant principal gave most of the testimony.

The Students' first claim of error is that the assistant principal's investigation was biased because A. L.'s mother taught at the school. There was, however, no evidence of bias and the issue was not raised at the tribunal hearing. "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 Students' first claim, therefore, is without merit.

The Students' second claim of error is that the assistant principal was allowed to testify although all of the witnesses were present. There is no statutory prohibition against an investigator giving testimony and the Students have not cited any case law to show that any error was committed by the assistant principal giving testimony. The Students' second assignment of error is without merit.

The Students' third assignment of error is that A. L. started the fight but was not charged with any wrongdoing. In the context of the evidence presented, it was immaterial whether A. L. started the fight. The Students took the fight beyond any probable self-defense. There was no evidence in the record concerning any action taken against A. L., but differences in treatment based upon different circumstances are not objectionable. There is no merit to the Students' third assignment of error.

The Students' fourth assignment of error is that A. L. could not identify who he initially began fighting with. Although there was some confusion from time to time in the hearing, there was evidence from which the tribunal could determine that Mi. P. was the one who was initially involved in the fight and that Ma. P. became involved only after the fight started. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

The fifth assignment of error is that Mi. P. acted only in self-defense. It is clear from the record that if Mi. P. acted in self-defense, he soon exceeded the self-defense mode and became the aggressor. Whether self-defense was involved is an issue to be determined by the tribunal based upon the credibility of the witnesses. There is evidence in the record to support the tribunal's decision that Mi. P. did not act in self-defense.

The sixth assignment of error is that the hearing officer refused to permit the Students to cross-examine the witnesses and improperly permitted the introduction of photographs of A. L. At one point during the hearing, the hearing officer sustained an objection to a question whether A. L. made any threatening remarks to the Students. Although the hearing officer arguably should have permitted the question, the error was harmless and the Students were otherwise permitted cross-examination of the witnesses.

The Students' objection concerning the photographs is that a proper foundation was not established for their introduction. This objection was not made at the hearing and cannot now be raised for the first time on appeal.

The Student's next assignment of error is that the Local Board reduced Ma. P.'s punishment without explanation. A local board of education is not required to provide an explanation if it reduces the punishment imposed by a student disciplinary tribunal. The lack of such explanation does not taint the process and does not provide any basis for an assignment of error.

The Students' eighth assignment of error is that Mi. P.'s prior record was introduced in evidence before the tribunal decided his guilt or innocence. This issue was not raised at the hearing before the tribunal and cannot now be raised for the first time on appeal.

The Students' ninth assignment of error is that the alternative school principal would testify that Mi. P. should not be in the alternative school. The State Board of Education, however, can only consider the evidence presented at the hearing below. This assignment is without merit.

The Students' last assignment of error is a general question whether the hearing should have been conducted. The hearing, however, was properly conducted, the tribunal was properly constituted, and the decisions properly reviewed. The Students were not denied due process and there was no showing of bias. The Students' last assignment is wholly without merit.

Based upon the foregoing, it is the opinion of the State Board of Education that decision of the Local Board was supported by the record in both cases and there were no errors in the proceedings in either case. The Local Board's decisions in both cases, therefore, are SUSTAINED.

This \_\_\_\_\_ day of August 2000.

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Bruce Jackson  
Vice Chairman for Appeals