

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. O.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2003-01
	:	
BIBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by J. O. (Student) from a decision by the Bibb County Board of Education (Local Board) to permanently expel him after finding him guilty of raping a female student in the girls’ restroom at school. The Student claims that the proper investigatory procedures were not used and that improper hearsay evidence was admitted during the hearing. The Local Board’s decision is sustained.

On April 11, 2002, a male and female student engaged in consensual intercourse in the girls’ bathroom. The Student served as a lookout for the couple. The male student left the bathroom and the female student remained behind so they would not be seen leaving together. Before the female student could leave, the Student entered the bathroom and demanded that the female student have sex with him. The female student refused and he pushed her to the floor, causing her to strike her back against a toilet. He then forced her to have sex with him. After the Student left the bathroom, two other boys entered the girls’ bathroom and forced the female student to have sex with them.

Following an investigation of the incident, and the receipt of the Student’s statement that he had oral sex with the female student, the Student was charged with rape, sodomy, sexual battery, aggravated assault, simple assault, battery, conspiracy to commit rape and other related charges. A hearing was held before a student disciplinary tribunal on May 10, 2002. The female victim did not appear to present testimony but testimony was received from several students and from the director of student safety who conducted the investigation. At the completion of the hearing, the tribunal found the Student guilty of rape, sodomy, and conspiracy to commit rape and permanently expelled him from school. When the Student appealed to the Local Board, the Local Board upheld the tribunal’s decision. The Student then appealed to the State Board of Education.

On appeal, the Student claims that his due process rights were violated because the investigation was improperly conducted and hearsay evidence was received at the tribunal hearing. The Student, however, has failed to point out any instances or examples of how or why the investigation was improperly conducted, or how the conduct of the investigation caused any denial of his due process rights. The State Board of Education,

therefore, concludes that the Student's claim that the investigation was improperly conducted does not have any merit.

The Student also claims that hearsay evidence was improperly admitted. This claim apparently arises from the fact that the victim did not testify at the hearing. Instead, the director of student safety testified about what the female student told him about the incident.

Hearsay evidence, standing alone, cannot form the basis for a decision. Its admission in an administrative hearing, however, is not prohibited and there is no denial of due process if hearsay evidence is admitted. *See, Jacob C. v. Columbia Cnty. Bd. of Educ.*, Case No. 1995-31 (Ga. SBE, Aug. 10, 1995). In the instant case, the Student admitted that he had oral sex with the female student. Additional direct evidence included a video tape that showed the Student near the girls' bathroom and the testimony of the male student who had consensual sex with the female student that he saw the Student enter the girls' bathroom before the female student left. The State Board of Education concludes that it was not improper to admit the hearsay testimony and that there was sufficient direct evidence to support the tribunal's decision that the Student raped and sodomized the female student, and conspired to commit rape.

The Student also claims that the female victim's disciplinary record was not examined during the hearing. The female victim's disciplinary record was not raised as an issue during 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). Similarly, the Student claims that the real perpetrators were not accused or punished. There was no evidence presented that there were other parties involved who were not punished and the Student failed to raise this issue during the hearing so it cannot be considered for the first time on appeal. The State Board of Education concludes that neither the female victim's disciplinary record nor any issue about other parties can be considered for the first time 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 to permanently expel the Student. Accordingly, the Local Board's decision is **SUSTAINED**.

This _____ day of October 2002.

Cathy Henson
Chairperson, State Board of Education