

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2008-58
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by A. W. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to expel him until February 11, 2009, with the option of attending an alternative school after finding him guilty of using profanity, chronic disruption of the school, and rude or disrespectful conduct because he swore at a teacher and he confronted another teacher in a belligerent manner. The Student claims that he did not swear at the teacher and that he was not confrontational with another teacher. The Local Board's decision is sustained.

On January 28, 2008, the Student asked a teacher why she had given him a disciplinary referral on the previous day. When the teacher said she would discuss the matter with him later, the Student made a profane comment as he exited the room. A teacher from across the hall claimed that she heard the Student and she prepared a statement. Later in the day, the Student confronted the second teacher and wanted to know what she claimed she had heard. The teacher felt that the Student was confrontational and disrespectful in his manner and she asked him to take the matter up with the administration, but the Student persisted in asking her what she had heard.

Because of the two incidents, the Student was charged with using profanity and rude or disrespectful conduct. Additionally, since he had been involved in a number of previous disciplinary actions, he was charged with chronic disruption of the school. A student disciplinary tribunal heard evidence in the form of testimony from both the teachers. The Student also testified that he did not swear as he left the room, but only said, "That's false". He also testified that the teacher who was across the hall could not have heard him since she was involved with other students. The tribunal found the Student guilty of the charges and expelled him until February 11, 2009, with the opportunity to enroll in an alternative school during the expulsion period. The Local Board upheld the decision and the Student appealed to the State Board of Education.

On appeal, the Student claims that he did not swear at the teacher and that written statements from other students showed that he did not swear.¹ The tribunal, however, after hearing the testimony of the teachers and the Student's testimony, decided to accept the version of events related by the teachers. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). The statements from the other students were hearsay evidence and could not be considered by the tribunal. The State Board of Education, therefore, is bound to accept the finding of the student disciplinary tribunal that the Student swore at the teacher as he left the room and was confrontational and disrespectful with the other teacher.

The Student claimed during oral argument that he obtained written statements from other students because he was told he could not bring other students to the hearing to testify on his behalf. If the Student was told he could not have witnesses testify on his behalf, then there would be a due process claim available. The record, however, shows that the Student was informed in the charge letter that he could be represented by counsel and had the right to subpoena witnesses. The record does not contain any request by the Student for a subpoena, and the Student did not raise any issue at the hearing about being denied the right to subpoena witnesses. "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 his punishment was too harsh because other students are not expelled as long when found guilty of more serious behavior. The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998). Local boards of education consider many factors when they impose disciplinary measures, including the prior disciplinary record of a student. In this case, the Student was involved in several prior incidents, which could have led the tribunal to decide that expulsion was necessary. Since the expulsion was within the authority of the Local Board, the State Board of Education will not interfere.

Based upon the foregoing, a review of the record and the arguments made, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the decision was within the authority of the Local Board. Accordingly, the Local Board's decision is SUSTAINED.

William Bradley Bryant
Vice Chairman for Appeals

¹ The Student presented his own oral argument in a very coherent, logical manner.