

STATE BOARD OF EDUCATION

STATE OF GEORGIA

L. G.,	:	
	:	
Appellant,	:	CASE NO. 2011-03
	:	
vs.	:	
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by L. G. (Student) from a decision by the Fulton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until January 1, 2011, with the option of attending alternative school during the period of expulsion, after finding him guilty of fighting. Appellant claims that his actions were taken in self defense, the school system failed to properly investigate the incidents, and he was denied an opportunity to make an unsworn statement. The Local Board’s decision is SUSTAINED.

On May 11, 2010, the Student was involved in a shoving incident with another student in the lunchroom. The Student was permitted to remain in school for the remainder of the day pending disciplinary measures. Later in the day, the Student became involved in a fight in the band room with another student who struck him in the eye with a rubber band and took his drumsticks. The Student was charged with making physical contact of an insulting or provoking nature and failure to comply with school rules.

A student disciplinary tribunal found the Student guilty of the charges and expelled him from regular school through the end of December 2010, with the option of attending an alternative school during the period of expulsion. The Local Board upheld the tribunal’s decision upon appeal by the Student. The Student then appealed to the State Board of Education.

The Student claims that he was acting in self-defense during both incidents. The testimony, however, shows that the Student was not acting in self-defense. In each instance, the other student was not attacking the Student when the Student reacted. For example, in the band room incident, the other student was leaving the room and going to a teacher when the Student chased him and began hitting him. These actions are not self-defense, but are retaliatory in nature. The State Board of Education, therefore, concludes that the tribunal did not err in rejecting the Student’s claim of self-defense and finding him guilty of the charges.

The Student claims that the school system failed to investigate properly the incidents before making the charges. There is no requirement in law that a school system must conduct an investigation in any manner. The Student has not cited any precedent to establish otherwise. Here, the Student was observed by a principal shoving another student in one instance and was observed by a teacher throwing punches in another instance. Little investigation is necessary when a teacher or administrator directly observes a student disobeying the rules. The State Board of Education concludes that the Student's claim is without merit.

The Student also claims that he was denied procedural due process because he was not given the opportunity to make an unsworn statement. This issue was not raised at the tribunal hearing and the record does not support the Student's contention. "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 record shows that the Student was given an opportunity to speak, was examined and cross-examined. The Student did not ask to make any additional comments, sworn or unsworn, and did not raise any objections about being unable to speak. The State Board of Education concludes that the Student's claim that he was denied procedural due process is without merit.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Student was not denied due process and that the evidence supports the decision of the tribunal and the Local Board. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of October 2010.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS