

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>SEAN P.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1993-5</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is an appeal by the parents of Sean P. (“Student”) from a decision by the Gwinnett County Board of Education (“Local Board”) to uphold the decision of a student disciplinary panel to expel the Student for the remainder of the 1992-1993 school year because he failed to follow the directions of a teacher to move his chair. The Student claims that the Student Disciplinary Panel was predisposed to find him guilty of the charges and expel him from school. The decision of the Local Board is sustained.

**PART II**

**FACTUAL BACKGROUND**

The Student, a senior, was in a writers’ workshop class on October 27, 1992. While he was seated at a computer, his teacher instructed the Student to take his regular seat so another student could use the computer. The Student was at the computer assisting the other student at the teacher’s direction. The Student took a seat located in the middle of the classroom in a location the teacher found distracting. The teacher asked the Student to move to his regularly assigned seat, but the Student refused. The teacher then asked the Student to leave the room. The teacher testified that as the Student was leaving, he made a “kissing” sound with his mouth,

which the teacher found offensive. The Student testified that he was asking the teacher whether he would be able to finish his paper, which was on the computer and due at the end of the period.

The principal charged the Student with violating Rules 4, 8, and 12. Rule 4 provides:

A student shall not cause or attempt to cause physical injury or behave in such a way that could reasonably cause physical injury to a school employee or make physical or verbal contact of a threatening or provoking nature with a school employee.

Rule 8 provides:

A student shall not fail to comply with reasonable directions or commands of teachers

Rule 12 provides:

Students who chronically disrupt or repeatedly violate other school rules may be charged with repeated violations of school rules or misbehavior. This rule applies after remediation attempts, including consideration by the Student Support Team, have been utilized.

On November 9, 1992, the Student Disciplinary Panel heard testimony from the Student's teacher and principal and from the Student. They also reviewed the Student's disciplinary record. The record shows that the Student was in a special education program during his freshman year, but his parents removed him from the program. Before the present incident, the Student was referred for discipline on numerous occasions. After the testimony, the Panel found the Student guilty of violating all three rules. The Panel voted to suspend the Student for the remainder of the 1992-1993 school year, with the opportunity of attending an alternative school.

The Student appealed to the Local Board. On December 15, 1992, the Local Board voted to uphold the decision of the Disciplinary Panel. The Student then filed a timely appeal with the State Board of Education.

PART III

## DISCUSSION

The Student's parents claim the punishment was too harsh under the circumstances. Additionally, they claim the principal was biased against the Student and failed to support him. The Student's parents also claim the Disciplinary Tribunal was predisposed to find the Student guilty.

"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). "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in 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 of Telfair County*, 203 Ga. 152 (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). "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 Ed.*, Case No. 1980-5 (Ga. SBE, 1980). Additionally, the State Board of Education is limited to reviewing only what is contained in the record. O.C.G.A. § 20-2-1160(e).

There is no evidence in the record that the principal was biased against the Student. The numerous disciplinary actions against the Student show the problems the Student had with his teachers rather than any bias by the principal. The State Board of Education concludes there is no evidence to support the Student's claim of bias.

The Student claims the Disciplinary Tribunal was predisposed to find him guilty of the

charges. This issue was not raised at the hearing; there is no evidence the Tribunal was not impartial. The State Board of Education concludes there is no merit in the Student's claim of partiality.

Finally, the Student claims the punishment was too harsh. The Local Board, however, has the authority to determine the disciplinary measures to be taken to maintain order and protect the health and welfare of its students. In the absence of any showing that the Local Board's decision was illegal, the Local Board's decision must stand.

#### PART IV

#### DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there is evidence to support the Local Board's decision, and there was no showing that the decision was arbitrary or capricious. The Local Board's decision, therefore, is

SUSTAINED.

This 13<sup>th</sup> day of May, 1993.

Al Abrams' seat is vacant due to his resignation effective April 30, 1993.

Robert M. Brinson  
Vice Chairman for Appeals