

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>D. S.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2004-08</b>
	:	
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by D. S. (Student) from a decision by the Gwinnett County Board of Education to uphold the decision of a student disciplinary tribunal that found the Student guilty of engaging in inappropriate sexual conduct on campus but allowed her to return to school on the day following the hearing. The Student argues that the charges should never have been brought against her because the school had a duty to supervise her and not let her get into a position where she could engage in such conduct. In addition, the Student argues that the evidence did not support the tribunal's finding that she was absent from class without permission and that she provided false information. The Local Board's decision is sustained.

The Student, a fifth grader, left class with a male student after telling her substitute teacher that she needed to go to another class to check on a party. The two students went to an area beneath some trailers and engaged in inappropriate sexual conduct. The Student was charged with sexual misconduct, unexcused absences, and other conduct subversive to good order (providing false information).

At a hearing before a student disciplinary tribunal, the Student admitted her guilt to all of the charges except the charge of providing false information. The tribunal found the Student guilty of all the charges, but permitted her to return to school the next day. The Local Board upheld the tribunal's decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

The Student claims that she did not provide false information about leaving the classroom. In addition, she claims that the school system failed to protect her because it permitted circumstances to exist that allowed her to engage in the sexual misconduct. In addition, the Student claims that the school system failed to issue her a subpoena for a witness.

Since there was no disciplinary action taken against the Student, the State Board of Education cannot provide the Student with any relief and the issues raised by the Student are moot.

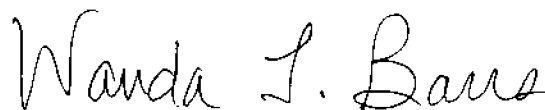
Even on the merits, the Local Board's decision was supported by the evidence and did not deny the Student any of her due process rights. The Student's admission to all the charges except one was sufficient to support the Local Board's decision that the Student was guilty. The Student's claim that she did not provide false information is based on a rather disingenuous argument. The Student claims that since she had been told that there was a party and she needed to know when it would take place, she did not lie to the teacher when she said she needed to leave to obtain information about the party, even though her intent in leaving was to engage in illicit sexual conduct under the trailers. The Student's failure to disclose the real reason she wanted to leave the classroom was sufficient to permit the tribunal and the Local Board to find that she provided false information.

There was no evidence that the Student asked for a subpoena for any witnesses. The issue was not raised before the tribunal, nor was it raised before the Local Board. "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). This issue, therefore, is without merit.

The Student's claim that the school system failed to protect her by allowing circumstances to exist that permitted her to engage in inappropriate sexual conduct is wholly without any merit whatsoever. The Student has not shown that the school system violated any federal or state law or regulation, nor has there been any showing of any tortuous conduct on the part of school personnel. The Student is merely attempting to avoid any personal responsibility by shifting the blame to the school system without any basis for such a shift.

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. Since, however, the Local Board did not impose any punishment on the Student, the State Board of Education cannot provide the Student with any relief. Accordingly, the Student's appeal is hereby DISMISSED.

This 14<sup>th</sup> day of November 2003.



Wanda T. Barrs  
Chairperson - State Board of Education