

STATE BOARD OF EDUCATION

STATE OF GEORGIA

S. P.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-24
	:	
OGLETHORPE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by S. P. (Student) from a decision by the Oglethorpe County Board of Education (Local Board) to uphold the decision of the student disciplinary tribunal to expel him from school until the end of the 2003-2004 school year because he had possession of a handgun in school. The Student claims that he was denied due process because he was not told that he could be expelled and that the tribunal's decision was arbitrary and capricious because he received the same punishment as another student whose action were more egregious. The Local Board's decision is sustained.

On September 18, 2003, a friend of the Student's asked him to take a pistol he had brought to school. The Student took the pistol after the other student removed the clip and all bullets. The Student kept the pistol for the rest of the day and then took it home. The Student's parents discovered the pistol and the Student told them what had happened. The school officials were then notified that a weapon had been on the school grounds. The Student was charged with possession of a weapon and a hearing was held by a student disciplinary tribunal. The Student admitted that he violated the Local Board's policy that prohibited the possession of weapons on campus. The student disciplinary tribunal decided to expel the Student for the remainder of the 2003-2004 school year. The Local Board upheld the tribunal's decision when the Student appealed the tribunal's decision. The Student then filed an appeal with the State Board of Education.

The Student first claims that he was denied due process because he was not told that he could be expelled for possessing a weapon on campus. This issue, however, was not raised at the hearing and, therefore, cannot be raised for the first time on appeal. "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).¹ The Student's claim that he was denied due process, therefore, cannot be considered at this time.

The Student next claims that the Local Board's decision was arbitrary and capricious because he received the same punishment as the student who initially brought the pistol to school. The fact that both students received the same punishment does not make the decision arbitrary and capricious. The fact that both students had possession of a gun on campus provided ample reason for both students to be expelled. O.C.G.A. § 20-2-751.1(a) provides that each school board has to adopt a policy that provides for "expulsion from school for a period of not less than one calendar year of any student who is determined ... to have brought a weapon to school." Since the legislature has determined that a one-year expulsion is appropriate, the State Board of Education concludes that the Local Board's decision was not arbitrary or capricious.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was not arbitrary or capricious and the Student was not denied due process. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of April 2004.

William Bradley Bryant
Vice Chairman for Appeals

¹ The Student Code of Conduct, however, informed students that possession of a weapon on campus could result in imprisonment for up to five years.