

STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. E.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-28
	:	
PIKE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by C. E. (Student) from a decision by the Pike County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him to an alternative school for 90 days because of chronic disciplinary problems. The Student claims that he is qualified for special education services and should not be placed in an alternative school. The Local Board's decision is sustained.

The Student was placed on a chronic disciplinary behavior plan on September 19, 2003 because of numerous referrals for disciplinary problems. The Student later refused to take his seat on a bus and also refused to follow directions in a classroom, which resulted in the convening of a disciplinary tribunal.

During the hearing before the tribunal, the bus driver testified that the Student got out of his seat after being told repeatedly to sit down. The Student also spit out of the bus window. In addition to the bus driver's testimony, the tribunal watched a video tape of the incidents.

The Student claimed that he was supposed to be obtaining services under the Individuals With Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA). He was receiving services under Section 504 of the Rehabilitation Act of 1973, but he had not, however, been identified as a student with a disability who qualified for services under IDEA. The tribunal found the Student guilty of the charges and decided to assign him to an alternative school for 90 days. 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 the school system failed to follow the Section 504 plan that was in place for him. He also claims that he was denied equal protection of the law under the 14th Amendment of the United States Constitution because other students on the school bus acted in the same manner he did without receiving any punishment. The Student also claims that the hearing officer was not independent and unbiased, thus denying him due process.

The Student has not identified how the school system failed to provide him the proper services under his Section 504 plan. Without some specifics, there is nothing for the State Board of Education to review. The State Board of Education, therefore, concludes that the Student's claim of failure to follow his 504 plan is without merit.

The Student claims that he was denied equal protection because he was punished and the other students on the bus were not punished even though they engaged in some of the same actions he performed. The Student's claim misconstrues what the disciplinary tribunal was considering; the decision was based on his multiple disciplinary infractions, not a single incident on the school bus. There was no evidence presented that the other students on the bus had chronic disciplinary behavior plans, which might put them into the category of being similarly situated to the Student. Since they were not similarly situated, there was no denial of equal protection by disciplining the student and not disciplining the other students.

The Student also claims that the hearing officer was biased. This issue was not raised during the tribunal hearing. "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). Since the issue was not raised before the tribunal, it will not now be considered.¹

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, the Local Board's decision was not an abuse of discretion, and the Student was not denied any constitutional rights. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of March 2004.

William Bradley Bryant
Vice Chairman for Appeals

¹ The Student did not present any evidence of bias on the part of the hearing officer, nor did the Student point out any indicators of bias by the hearing officer.