

STATE BOARD OF EDUCATION

STATE OF GEORGIA

M. G.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-40
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by M. G. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to expel him from regular school until January 1, 2005 with the option of attending an alternative school during the expulsion period after he was found guilty of fondling female students on the bus. The Student claims that he has been denied procedural due process since he should be in special education classes and should not be removed from school under the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA). The Local Board's decision is sustained.

On January 27, 2004, a bus driver observed the student touching a female student in the chest area while they were on the bus. This followed a previous similar incident where the Student received a warning from the bus driver that any further touching of female students would result in a referral for disciplinary action. The bus driver reported the incident and an assistant principal investigated. The Student was charged with sexual misconduct and a hearing was held on February 10, 2004. During the hearing, the female student testified that the Student had been touching her for several days. Another female student also testified that the Student had been touching her breasts and legs while they were on the bus and even after she had told him to stop. The Student admitted to touching the girls on the bus.

At the end of the hearing, the disciplinary hearing officer found the Student guilty and expelled him from regular school until January 1, 2005 with the option of attending an alternative school during the expulsion period. The Student appealed to the Local Board on the grounds that the expulsion period was too long. The Local Board, however, upheld the decision of the disciplinary hearing officer. The Student then filed an appeal to the State Board of Education.

On appeal to the State Board of Education, the Student claims that he is eligible for special education services and the actions taken by the Local Board are illegal under

the provisions of the Individuals With Disabilities Education Act, 20 U.S.C. § 1400, *et seq.* (IDEA).

The issues raised by the Student on appeal were not raised before the tribunal or 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). There was no evidence in the record that the Student ever qualified for special education services. In an effort to support his arguments, the Student submitted facts that were not contained in the record. The State Board of Education, however, cannot consider anything not contained in the record. O.C.G.A. § 20-2-1160(e).

The Student's basic contention is that the Local Board violated the IDEA. The State Board of Education does not have jurisdiction to consider issues that arise under IDEA. Instead, IDEA has its own set of rules and procedures for challenging the action of a local school system and the Office of State Administrative Hearings has jurisdiction to hear complaints concerning violations of IDEA. *See*, O.C.G.A. §20-2-1160(F); O.C.G.A. § 50-13-40 *et seq.*; Ga. Comp. Rules and Regs., Rule 160-4-7-.18(1)(e).

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 and the Student's arguments are without merit. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of July 2004.

William Bradley Bryant
Vice Chairman for Appeals