

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>R. H.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2004-48</b>
	:	
<b>RICHMOND COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by R. H. (Student) from a decision by the Richmond County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to assign her to an alternative school through the end of the first semester of the 2004-2005 school year after finding her guilty of fighting and possession of a weapon after she attacked another student in an art class, broke a pottery piece over the other student's head, and then cut the other student with a piece of pottery. The Student claims that she was denied procedural due process because she did not receive proper notice of the hearing. The Local Board's decision is sustained.

The Student claims that she was denied due process because the School System failed to give her proper notice of the hearing, which prevented her from obtaining subpoenas for witnesses. The record, however, does not support the Student's position.

Following the Student's involvement in a fight on January 14, 2004, a student disciplinary tribunal hearing was scheduled for January 28, 2004. The hearing, however, had to be rescheduled for February 4, 2004 because of inclement weather on January 28, 2004. At the February 4, 2004, hearing, the Student asked for a continuance because the notice of the hearing was sent to the wrong address and the Student's parent had never received the notice. The hearing was rescheduled for February 12, 2004 and the Student was given copies of all the notice documents.

The hearing was held on February 12, 2004. The Student's parent said she had not received notice of the date and time for the rescheduled hearing, and was present only because the Student had telephoned her that day and told her the hearing was going to be held. The Student did not ask for another continuance and the hearing proceeded. After hearing the evidence, the tribunal decided to assign the Student to an alternative school for the remainder of the 2003-2004 school year and for the first semester of the 2004-2005 school year. The Local Board upheld the tribunal's decision and the Student then appealed to the State Board of Education.

The record does not show that the Student asked for any subpoenas. The Student did not mention the need to have any witnesses who were not present. If the Student needed to have any witnesses, she could have asked for a continuance. The Student did not raise any objections to going forward with the 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). Since the Student did not raise the issue before the tribunal, the issue cannot now be considered by the State Board of Education.

The Student also argues that there was disparate treatment since the other student involved in the fight was permitted to return to his regular classes after the hearing. The evidence, however, shows that the other student did not engage in the fight, but, instead, retreated from the Student with his hands raised in front of him in an attempt to ward off her blows. The Student's teacher testified that she was the attacker. The two students, therefore, were not similarly situated such that the other student should have received the same punishment. In addition, the punishment was not excessive considering the severity of the Student's attack on the other student.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student due process and that the punishment was within the Local Board's authority. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of August 2004.

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William Bradley Bryant  
Vice Chairman for Appeals