

STATE BOARD OF EDUCATION

STATE OF GEORGIA

W. R.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-51
	:	
COBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by W. R. (Student) from a decision by the Cobb County Board of Education (Local Board) to assign him to an alternative school for the remainder of the 2003-2004 school year and for all of the 2004-2005 school year after a student disciplinary tribunal found him guilty of committing sexual battery. The Student claims that the notice of the hearing he received was improper and that the Local Board's decision does not comply with the progressive discipline policies of O.C.G.A. § 20-2-735. The Local Board's decision is sustained.

During March 2004, the administration at Lassiter High School learned that the Student had been assaulting younger male students in the high school and attempting to force foreign objects into their rectal area while they were fully clothed. The Student was charged with sexual battery and given notice that he would be assigned to an alternative school for the remainder of the 2003-2004 school year unless he requested a hearing. The Student asked for a hearing before a student disciplinary tribunal and a hearing was held on April 22, 2004. An attorney represented the Student at the hearing. The Student did not raise any objections about the conduct of the hearing or the notices he had received. At the end of the hearing, the tribunal decided to permanently expel the Student.

The Student appealed to the Local Board. The Local Board reduced the punishment and decided to reassign the Student to an alternative school until the end of the 2004-2005 school year and to assign him to another high school after he completed his placement at the alternative school. The Student then filed an appeal with the State Board of Education.

On appeal to the State Board of Education, the Student claims that he was denied due process because the notice given to him of the charges did not inform him about the maximum discipline. In addition, he claims that the Local Board's decision does not follow the progressive discipline principles set forth in O.C.G.A. § 20-2-735.

The issue of improper notice was not raised before the tribunal. "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). In the instant case, the Student's attorney was asked whether there were any objections concerning the notice and the attorney stated that there were none.

Notwithstanding the lack of any objection, the notice included a copy of the Local Board's policy JCDA, which provides that a student can be expelled for a specified time for sexual battery. Section V, Paragraph G, Cobb County Board Policies, Student Behavior Code, Policy JCDA (June 26, 2003). The policy also provides for permanent expulsion for serious offenses. The Student, therefore, was given notice of the maximum penalty for his offense despite his protestations to the contrary. Much of the Student's argument arises from the fact that the notices stated that the principal was going to recommend assignment to an alternative school for the remainder of the 2003-2004 school year. There was, however, nothing in the notices that stated that the principal's recommendation was anything more than a recommendation, or that the tribunal would be bound to the principal's recommendation when the policy provided for permanent expulsion. The State Board of Education concludes that there is no merit to his claim that the notice was deficient.

The Student also claims the Local Board should have reversed the tribunal's decision rather than reduce the punishment. This argument is made without any citation to any supporting authority. Contrary to the Student's argument, O.C.G.A. §20-2-754(d) provides, in part, that the local board, in reviewing the decision of a tribunal, "may take any action it determines appropriate...." The Local Board, therefore, was not confined to only upholding or reversing the tribunal, but had the statutory authority to make any decision it determined was appropriate.

The Student claims that the Local Board's decision did not follow the provisions of O.C.G.A. § 20-2-735. The Student claims that he did not receive progressive discipline and that the discipline he received was more severe than the discipline received by another student who was also involved in the incidents of sexual battery.

O.C.G.A. § 20-2-735 provides, in part:

(d) Progressive discipline processes ... shall be designed to create the expectation that the degree of discipline will be in proportion to the severity of the behavior leading to the discipline, that the previous discipline history of the student being disciplined and other relevant factors will be taken into account, and that all due process procedures required by federal and state law will be followed.

O.C.G.A. § 20-2-735 (Lexis Publ., 2001 Ed.). The Local Board's policy JCDA provides for progressive discipline and a matching of discipline to the severity of the behavior. O.C.G.A. § 20-2-735 does not require that the first offense involving egregious behavior will result in a slap on the wrist. Instead, it specifically provides that policies should fashion discipline "in proportion to the severity of the behavior" The behavior engaged in by the Student was particularly egregious. The State Board of Education concludes that the Local Board's policy is in compliance with O.C.G.A. § 20-2-735.

There is nothing in the record concerning the discipline received by any other student. The review by the State Board of Education must be confined to the evidence contained in the record. O.C.G.A. § 20-2-1160(e). Thus, there is no basis for any claim that a disparity in treatment demonstrates a lack of proportionate discipline by the Local Board. Additionally, the fact that two students may receive different disciplinary measures does not automatically establish that the Local Board's policy is flawed because differing circumstances may call for differing outcomes. The State Board of Education concludes that the Student has failed to establish that the Local Board's policies do not comply with O.C.G.A. § 20-2-735.

Based upon the foregoing, it is the opinion of the State Board of Education that the notices provided to the Student were not defective, and that the Local Board's decision was in compliance with O.C.G.A. § 20-2-735. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of August 2004.

William Bradley Bryant
Vice Chairman for Appeals