

STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. G.,

Appellant,

vs.

GWINNETT COUNTY
BOARD OF EDUCATION,

Appellee.

:
:
:
:
:
:
:
:
:
:
:
:

CASE NO. 2005-03

DECISION

This is an appeal by A.G. (Student) from a decision by the Gwinnett County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him until January 1, 2005 after finding him guilty of fighting and several related infractions. The Student claims that the punishment was too harsh since he was merely acting in self-defense. The Local Board’s decision is sustained.

On April 16, 2004, the Student became involved in a fight with another student. Two other students jumped in and began hitting the Student. When a teacher attempted to separate them, the Student cursed the teacher and tried to avoid the teacher’s grasp. The Student was charged with (1) disrupting school, (2) use of profanity and abuse of an employee, (3) fighting, (4) failure to follow directions, and (5) violation of school rules. A hearing was held before a student disciplinary tribunal on April 29, 2004. The tribunal heard testimony from witnesses to the fight and received corroborating statements from some students who were not present at the hearing. The Student admitted his guilt on all charges except the charge relating to abuse of an employee. The tribunal found the Student guilty on all charges 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 the tribunal’s decision to the Local Board, but the Local Board upheld the tribunal’s decision. The Student then filed an appeal to the State Board of Education.

On appeal, the Student claims that the punishment was too harsh because he was acting in self-defense. In addition, the Student claims that his punishment was harsher than the punishment received by the other students.

The Student did not raise the issue of any disparity in punishment with 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). The Student claims that the issue did not arise until after his hearing was over so it could not have been raised at the hearing. These circumstances, however, do not negate the fact the issue was not raised

before the Local Board, the Local Board has not made a decision regarding the issue, and there is no evidence in the record to support the Student's claim of disparity. Additionally, since the Local Board did not consider the issue, the State Board of Education does not have a decision regarding the issue to review. The Student's claim of disparity, therefore, will not be considered by the State Board of Education.

Although the Student claims that he was only defending himself, there was evidence that he was the one who started the fight. The tribunal members were the ones who had to sort through the testimony of all the witnesses and decide which version of the facts to believe. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998).

Regarding the Student's claim that the punishment was too harsh, the State Board of Education does not interfere with the punishment decisions of local boards of education if the punishment is authorized and is reasonably related to the offense *See, B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998).

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not exceed its authority or abuse its discretion by expelling the Student for one semester for fighting in school and cursing a teacher. The Local Board's decision, therefore, is
SUSTAINED.

This _____ day of October, 2004.

William Bradley Bryant
Vice Chairman for Appeals