

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>E. M.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-23</b>
	:	
<b>HENRY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by E. M. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the first semester of the 2005-2006 school year, with the option of attending an alternative school during the first semester of the 2005-2006 school year, after the tribunal found him guilty of possessing a weapon on campus. The Student claims that it is unconstitutional to expel him from school. The Local Board's decision is sustained.

On October 14, 2004, the Student had a loaded BB gun in his possession at school. When he was first questioned, the Student denied that he had a weapon. The gun was found in the Student's waistband when an assistant principal and resource officer searched the Student. The Student was charged with possession of a weapon and with giving false information.

At the hearing before a student disciplinary tribunal, the Student admitted his guilt to both charges. The tribunal expelled the Student until the end of the first semester of the 2005-2006 school year, with the option of attending an alternative school during the first semester of the 2005-2006 school year. The Student appealed the decision to the Local Board, which upheld the tribunal decision. The Student then filed an appeal with the State Board of Education.

On appeal, the Student argues that (1) he has a constitutional right to a public education, which is being denied by the Local Board's decision; (2) the decision is too harsh because he did not threaten or harm any other students in school and he does not have a record of any previous disciplinary actions; (3) the punishment is harsher than what would be given to a student who commits a more serious offense, and (4) there was no justification for expelling him for one year.

The Student failed to raise any of these issues on appeal to 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). Accordingly, there is no basis for reversing the Local Board's decision.

In *D. B. v. Clarke County Board of Education*, 220 Ga. App. 330, 331-332, 469 S.E.2d 438, 439 (1996), the Court pointed out that "The right to a free public education is not unlimited ... under the Georgia Constitution. .... [T]he right to a free public education ... [can] be, and has been, limited by statute." The Court also went on to point out that Georgia law permitted permanent expulsion under the Public School Disciplinary Tribunal Act, O.C.G.A. § 20-2-750 *et seq. Id.* at 332. The State Board of Education concludes that the Local Board did not deny the Student any of his constitutional rights and that it had the authority to expel the Student until the end of the first semester of the 2005-2006 school year.

The Student also claims that the punishment was too harsh because he did not threaten or harm any other student and did not have any previous disciplinary record. The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998).

The Student did not cite any facts or law or provide any argument to support his statement that the punishment is harsher than what would be given to a student who commits a more serious act. The Student, therefore, is deemed to have abandoned this argument.

The Student also argues that there was no justification for expelling him for more than a year because of his record and participation in community activities. This argument, however, goes to the harshness of the punishment and the weight given to such factors by the tribunal and the Local Board. As stated above, the State Board of Education cannot go behind the Local Board's decision if the decision is authorized by law.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny the Student any of his constitutional rights and acted within the scope of its authority. The Local Board's decision, therefore, is SUSTAINED.

This \_\_\_\_\_ day of March 2005.

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Carol S. Williams  
Vice Chairperson  
State Board of Education

