

STATE BOARD OF EDUCATION

STATE OF GEORGIA

T. P.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-16
	:	
CLAYTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by T. P. (Student), a fifth grader, from a decision by the Clayton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from school for one year after finding him guilty of handling a weapon in school. The Student claims that the Local Board’s decision was based on an erroneous reading of federal law and an abuse of discretion, and that he was denied equal treatment under the law. The Local Board’s decision is sustained.

On April 19, 2005, a classmate of the Student brought a gun to school. The Student handled the gun at the school and on the school bus. When confronted about the incident, the Student admitted that he had handled the gun at school. The Student was charged with violating the Local Board’s policy that prohibits students from handling dangerous weapons on school property. Operating under the assumption that a one-year expulsion was mandatory, a student disciplinary tribunal decided to expel the Student for one year. The Local Board upheld the tribunal’s decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

The Student first claims that the Local Board’s decision was clearly in error because federal law provides for a one-year expulsion only if a student brings a gun to a school.¹ Notwithstanding federal law, the Local Board’s policy provides for expulsion if a student handles a weapon at school.² The Student pointed out the tribunal’s error when he appealed to the Local Board, but the Local Board agreed with the one-year expulsion. The Local Board’s decision was based upon its own policies and not on federal law; it was not based upon an erroneous reading of the law.

¹ The Student’s basic premise is erroneous because 20 U.S.C. § 7151(b)(1), the Gun Free Schools Act, provides for expulsion for not less than one year for any student who brings a firearm to school, or who is found “to have possessed a firearm at a school....”

² Clayton County Board of Education Policy JCDAE; Student Code of Conduct, 2005 – 2006, Grades K-12. *See, also*, O.C.G.A. § 20-2-751.1, which provides for expulsion for one year for bringing a weapon to school.

The Student next claims that the Local Board's decision was an abuse of discretion because it was clearly excessive to expel a ten-year old from school for one year for playing with a gun at school. The Student however, does not cite any case or statutory law to support his claim. It was within the Local Board's discretion to expel the Student and the State Board of Education does not deem an expulsion for one year for handling a gun at school to be so excessive as to make the decision an abuse of discretion.

The Student also claims that he was denied due process because: first, the Local Board's Policy JCDAE incorrectly cites the federal Safe School Act of 1994; second, another student did not receive the same punishment, and, finally, because two of the person's serving on the disciplinary tribunal sat on the disciplinary tribunals of other students who were involved in the incident.

The incorrect citation to federal law did not result in the denial of any due process rights of the Student. The Student was told what he was charged with and that he could be expelled. The Student was given all of the information he needed and the incorrect citation of law did not prevent him from preparing for the tribunal hearing.

The Student claims that other students were treated differently, but there is no evidence in the record of how any other students were treated. The State Board of Education must confine itself to the record and, in the absence of any evidence, there cannot be any claim of a lack of equal protection.

Finally, the Student claims he was denied due process because two of the tribunal members served on other tribunals of other students involved in the incident. This issue was not raised 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).

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was not arbitrary or capricious and did not violate any of the Student's due process rights. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2005.

Wanda T. Barrs
Chair, State Board of Education