

STATE BOARD OF EDUCATION

STATE OF GEORGIA

T. K.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-31
	:	
DOUGLAS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by T. K. (Student) from a decision by the Douglas County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him from school until November 4, 2005, after finding him guilty of improperly touching a female student. The Student claims (1) that he was denied due process because his accuser was not present at the hearing, and (2) the Local Board abused its discretion because he should have been charged with a level two offense rather than a level one offense. Because the period of suspension has passed, the State Board of Education cannot provide the Student with any relief and the issues raised are moot. Accordingly, the appeal must be dismissed.

The Student claims the school system denied him due process because the school system informed him that his accuser would not be attending the hearing. The school system, however, told the Student that he had the right to have subpoenas issued for the attendance of witnesses. The Student did not seek to obtain a subpoena to have his accuser attend the hearing. Additionally, the Student did not raise this issue at the tribunal 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). 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 State Board, therefore, concludes that the Local Board did not deny the Student due process.

The Student also claims that he should have been charged with a level two offense rather than a level one offense and that it was an abuse of discretion to charge him with the level one offense.¹ As argued by the school system, however, the school system is not required to charge a student under any particular policy. Instead, it must prove that a student committed the offense that the school system has charged. If an offense with a greater disciplinary measure attached is proven, it does not mean that the student should have been charged with a lesser-included offense that the evidence also covers. There is

¹ Level two offenses carry lesser penalties than level one offenses.

no abuse of discretion involved in selecting the offense that requires a greater quantum of proof or a different measure of proof than another offense requires. Accordingly, the State Board of Education concludes that the Local Board's decision was not an abuse of discretion.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board is unable to provide the Student any relief since the suspension period has passed and thus rendering all issues moot. Accordingly, the appeal is hereby DISMISSED.

This _____ day of February 2006.

William Bradley Bryant
Vice Chairman for Appeals

SUMMARY

This is an appeal by T. K. (Student) from a decision by the Douglas County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend him from school until November 4, 2005, after finding him guilty of improperly touching a female student. The Student claims (1) that he was denied due process because his accuser was not present at the hearing, and (2) the Local Board abused its discretion because he should have been charged with a level two offense rather than a level one offense. Because the period of suspension has passed, the State Board of Education cannot provide the Student with any relief and the issues raised are moot. Accordingly, the appeal must be dismissed.