

STATE BOARD OF EDUCATION

STATE OF GEORGIA

G. H.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-34
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by G. H. (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 for one year until October 12, 2006, after finding him guilty of vandalizing a school employee's private property, committing arson, possessing fireworks, lying, taking school property, and causing a disruption at a football game. The Student claims that he was denied due process and equal protection, that the tribunal panel was biased, and that the punishment was too harsh. The Local Board's decision is sustained.

On September 24, 2005, the Student, along with some other students, lit some fireworks during a football game and caused a fire to start. Later that same night, the Student was with a group of students who lit some fireworks in the front yard of a high school principal that caused another fire to start and resulted in extensive damage. Additionally, the Student took a walkie-talkie from his school on the same day and did not return it until the following week. The school system charged the Student with damaging the property of a school employee, arson, possession of fireworks, lying, creating an incident at a football game, and improper possession of school property. The Student admitted all of the charges except damaging the property of a school employee and arson.

During the hearing before a student disciplinary tribunal, the Student claimed that he was not the one who lit the fireworks that damaged the principal's property, he did not know the principal or where the principal lived, and that another individual lit the fireworks without the encouragement or foreknowledge of the other students present. The tribunal, however, found him guilty on all charges and expelled him from regular school for one year with the option of attending an alternative school during his expulsion. The Local Board upheld the tribunal's decision when the Student appealed. The Student then filed an appeal with the State Board of Education.

On appeal to the State Board of Education, the Student makes several claims that he did not raise before the student disciplinary tribunal. The Student claims that the school system denied him his right not to incriminate himself and improperly questioned him outside the presence of his parents. He also claims that the school system improperly failed to produce the written statement of another student. Additionally, he claims that the tribunal panel members were biased and the hearing was not kept confidential. Finally, the Student claims that it was improper for two school administrators not to take action when they witnessed the fireworks display at the football game. "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). Since these issues were not raised before the tribunal, the State Board of Education cannot consider them for the first time on appeal.

The Student also claims that he was denied equal protection because his punishment was more severe than the punishment of the other students involved in the incident. A difference between the punishment given to the other students and the punishment received by the Student, however, does not establish that the Student was denied equal protection. The tribunal could find that the Student's actions and degree of culpability differed from that of the other students involved. For example, there was evidence that the Student improperly took school property when the other students did not, and the Student was the one who obtained the fireworks. Additionally, the Student's disciplinary record may have been different from that of the other students. The State Board of Education, therefore, concludes that the Local Board did not deny the Student equal protection.

The Student also claims that there was no evidence to support the tribunal's finding that he harmed the property of a school employee or that he engaged in arson since he did not light the fireworks that caused the fire. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). There was evidence that the Student was the one who obtained the fireworks.¹ There was also evidence that he was present when the other student lit the fireworks that caused the fire in the principal's yard. There was also evidence that the students were looking for the employee's house before the incident occurred. Based upon these factors, the tribunal could conclude that the Student was directly involved in damaging the principal's property and starting a fire.

¹ The Student admitted that he stole the fireworks from the garage of another student who was not involved in any of the incidents.

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 rights and that there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of March 2006.

William Bradley Bryant
Vice Chairman for Appeals