STATE BOARD OF EDUCATION

STATE OF GEORGIA

T. G.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2006-38**
	:	
FLOYD COUNTY BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by T. G. (Student) from a decision by the Floyd County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to suspend her for the remainder of the first semester of the 2005-2006 school year after finding her guilty of engaging in improper contact with another student on campus. The Student claims that she was denied special education services under the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* (the "Act" or "IDEA"), she was denied due process because evidence was improperly admitted and the hearing was not held within ten school days, and the evidence presented by the school system was not credible. The suspension period has passed and the State Board of Education cannot provide the Student with any relief, thus making all issues raised moot. The appeal, therefore, is dismissed.

The Student claims that she was improperly removed from school because she should have been enrolled in special education services under IDEA. Under IDEA, however, there are provisions for establishing the eligibility of a student for special education services and the State Board of Education does not exercise jurisdiction in reviewing the eligibility of students for special education services. Since the Student was not enrolled as a special education student, her suspension did not violate IDEA.

The Student claims that the hearing was not held within ten school days after she was charged. This issue, however, was not raised at the hearing before the tribunal. "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 also claims that the evidence presented by the school system was not credible. Substantial differences existed in the testimony of the witnesses. "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). Although the tribunal chose to accept the story of three or four students despite the contradictory testimony of several other students who were present during the incident, the tribunal's decision on credibility must stand upon review.

Since the suspension period has ended, the State Board of Education cannot provide the Student with any relief and the issues raised, therefore, are moot. Accordingly, the appeal is hereby
DISMISSED.

This _______ day of March 2006.

William Bradley Bryant
Vice Chairman for Appeals