

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>D. M.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2007-39</b>
	:	
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	<b>DECISION</b>
<b>Appellee.</b>	:	

This is an appeal by D. M. (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 from regular school until August 1, 2007, with the option of attending an alternative school during his expulsion term, after finding him guilty of disrupting school, disruptive behavior on a school bus, rude conduct directed at school staff, and failure to obey directions. The Student claims that the punishment is excessive and illegal because the school system characterized it as a suspension, which is defined by law as placement out of school only until the end of the semester.<sup>1</sup> The Local Board’s decision is sustained.

On December 12, 2006, the Student wanted to get off his bus at another student’s house. Since he did not have a permission slip, the bus driver refused his request. When the bus arrived at his stop, the Student initially refused to exit the bus and told the bus driver, “I’m not getting off the bus”. After approximately ten minutes, the Student finally exited the bus, but as he was passing in front of the bus, he mouthed an obscenity towards the bus driver. The bus driver reported the incident to her supervisor.

While investigating the incident, the bus driver’s supervisor determined that the Student should have been riding a different bus that passed by his house. The next day, December 13, 2006, when the Student attempted to board his old bus, the bus driver directed him to go to a different bus. The Student refused and became very angry and refused to obey the instructions of the bus driver, the bus driver’s supervisor, and an assistant principal. The Student then ran off the bus and ran off campus. The assistant principal delayed the release of the buses while they searched for the Student. Because of the delay, parents began calling the school to find out where their children were.

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<sup>1</sup> O.C.G.A. § 20-2-751 defines “expulsion” as expulsion “beyond the current school quarter or semester” and “long-term suspension” as “suspension for more than ten days but not beyond the current school quarter or semester”.

The Student was charged with disrupting school, disruptive behavior on a bus, rude and disrespectful behavior directed to a school staff member, and failure to obey directions of staff. A student disciplinary tribunal heard testimony on the charges from the bus driver, the bus driver's supervisor, two assistant principals and the Student. The tribunal found the Student guilty of all the charges and expelled him until August 1, 2007, with the opportunity to attend an alternative school during his expulsion term.

The Local Board upheld the tribunal's decision when the Student appealed. The Student then appealed to the State Board of Education.

The Student claims that the length of the punishment is excessive and in violation of O.C.G.A. § 20-2-751. The Student also claims that the school system failed to follow progressive discipline policies and denied him due process because the bus driver's report was not sent to his parent.

The Student's first claim is that since O.C.G.A. § 20-2-751 defines a long-term suspension as "suspension for more than ten school days but not beyond the current school quarter or semester" that the school system cannot "suspend" him until August 1, 2007, which is beyond the current school quarter. In its notification to the Student of the tribunal's decision, the school system wrote, "[The Student] will be suspended until August 1, 2007."

Contrary to the Student's argument, there is nothing in the definition of "long-term suspension" that limits the school system to using the words "suspension" and "expulsion", or prohibits the school system from using the word "suspension" for a period of time that is defined in the Code as an "expulsion". As pointed out by the Local Board, there is nothing in O.C.G.A. § 20-2-751 that requires school systems to refer to disciplinary measures that exceed the current school quarter or semester as an expulsion when communicating with parents and students. The State Board of Education, therefore, concludes that the Local Board did not violate the provisions of O.C.G.A. § 20-2-751 in referring to the expulsion until August 1, 2007, as a suspension.

The Student next claims that the punishment is too harsh and amounts to punishment for previous infractions for which he has already been punished. At the same time, however, the Student claims that the punishment is improper because the school system failed to use progressive discipline measures. The record shows that the Student has been disciplined numerous times and the school system has imposed various forms of discipline, including in-school suspension and short-term out-of-school suspension. Despite the Student's arguments, the school system has followed a progressive discipline policy. The Local Board was authorized to expel the Student until August 1, 2007. O.C.G.A. § 20-2-755. "A local board of education ... is charged with the responsibility of managing the operation of its schools, and, in matters of discipline, the State Board of Education cannot substitute its judgment for the judgment of the local board. *See, Boney v. County Board of Education for Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); *Braceley v. Burke County Bd. of Ed.*, Case No. 1978-7." *Joseph M. v. Jasper Cnty. Bd. of*

*Educ.*, Case No. 1981-40 (Ga. SBE, Feb. 11, 1982). The State Board of Education concludes that the punishment was not too harsh, did not punish the Student for prior incidents, and did not violate any progressive discipline requirements.

The Student also claims that he was denied due process because the bus driver's report was not provided to him and because the notice of charges was not specific enough. Neither of these two issues was raised 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).

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board of Education acted within its authority, its decision was not arbitrary or capricious, and the Student was not denied due process. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_\_ day of June 2007.

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William Bradley Bryant  
Vice Chairman for Appeals

#### SUMMARY

This is an appeal by D. M. (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 from regular school until August 1, 2007, with the option of attending an alternative school during his expulsion term, after finding him guilty of disrupting school, disruptive behavior on a school bus, rude conduct directed at school staff, and failure to obey directions. The Student claims that the punishment is excessive and illegal because the school system characterized it as a suspension, which is defined by law as placement out of school only until the end of the semester. The Local Board's decision is sustained.