STATE BOARD OF EDUCATION

STATE OF GEORGIA

A. R.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2007-50**
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by A. R. (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 January 1, 2008, with the option of attending an alternative school during his period of expulsion, after finding him guilty of making harassing telephone calls to an assistant principal. The Student claims that the school system conducted an unreasonable search of his cellular telephone in violation of the Fourth Amendment to the United States Constitution. The Student also claims that prejudicial evidence was presented to the tribunal. Additionally, the Student claims that the punishment was excessive. The Local Board's decision is sustained.

The Student was charged with making harassing telephone calls to an assistant principal and lying about the incident. At a student disciplinary tribunal hearing on February 1, 2007, the Student pleaded guilty to the charges. The tribunal expelled the Student until January 1, 2008, but gave him the option of attending an alternative school during his expulsion. The Student filed an appeal to the State Board of Education when the Local Board upheld the tribunal's decision following his appeal to the Local Board.

On appeal, the Student claims the school system conducted an unreasonable search of his cellular telephone in violation of the Fourth Amendment to the United States Constitution. He also claims that prejudicial evidence was presented to the tribunal panel. The Student, however, did not present either of these issues to the tribunal; he made no claim of an unreasonable search and did not object to the introduction of any testimony. "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). Neither of these issues, therefore, will be considered by the State Board of Education.

The Student also claims that the punishment was too severe because the evidence only showed that he made one telephone call to the assistant principal. Although the Student denied that he used any profanity, the assistant principal testified that several telephone calls were made and contained profanity. "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). "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, therefore, concludes that the Student's punishment was not too severe.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the tribunal's decision and the punishment was not too severe. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of July 2007.

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William Bradley Bryant
Vice Chairman for Appeals