

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2007-56
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by J. W. (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 after finding him guilty of defecating in a desk drawer in a science lab. The Student claims that there was no evidence to support the tribunal's decision, that the punishment was too harsh, that he was denied due process and discriminated against. The Local Board's decision is sustained.

On February 13, 2007, the Student was observed by other students defecating into the drawer of a lab station in science lab. The Student was charged with defecating in a classroom, causing a school disturbance, engaging in behavior that could cause physical injury and damage or misuse of school property. At a hearing before a student disciplinary panel, students testified that they saw the Student walk to the station and drop his pants. Shortly thereafter, a noxious odor permeated the room. The tribunal found the Student guilty of the charges and expelled him until March 1, 2008, with the option of attending an alternative school. The Local Board upheld the tribunal's decision when the Student appealed and the Student then filed an appeal to the State Board of Education.

The Student claims that there was no evidence to support the tribunal's decision because none of the witnesses observed any elimination from the Student's body, thus establishing reasonable doubt whether he defecated in the classroom. "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). The student witnesses testified that they observed the Student go through all the motions consistent with defecating and they smelled an odor shortly thereafter. From the testimony given, the tribunal could conclude that the Student committed the act.

The Student also claims that the punishment is too harsh. The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998). The State Board of Education concludes that the punishment was not too harsh.

The Student also claims that he was denied due process because he was not given the names of witnesses who would have testified in his favor. He also claims that he was discriminated against because of his race. Neither of these issues was raised 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). Because these issues were not raised, there is no evidence in the record that there were any students who would have testified in the Student's favor, nor was there any evidence that the Student was discriminated against because of his race. The State Board of Education therefore, concludes that it will not consider these issues.

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 Local Board acted within its authority. The Local Board's decision, therefore is hereby SUSTAINED.

This ____ day of August, 2007.

William Bradley Bryant
Vice Chairman for Appeals