

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>F. W.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2008-33</b>
	:	
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by F. 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 from regular school until June 1, 2008, after finding him guilty of fighting on a bus. The Student claims that he was denied due process during the hearing and the evidence does not support the charges. The Local Board's decision is sustained.

On October 10, 2007, a fight started on a middle school bus when one student began attacking another student. The Student and three others joined in the attack and began beating on the victim.<sup>1</sup> The bus driver broke up the fight, but she had to call for assistance to calm the students on the bus.

The Student was charged with battery, causing physical injury to another student, and creating a disruption on a school bus. At a student disciplinary tribunal hearing, the bus driver and the victim identified the Student as one of the attackers. The Student admitted that he had created a disruption on the bus, but denied the other charges. The student disciplinary tribunal found him guilty of all the charges and expelled him from school until June 1, 2008, with the option of attending an alternative school during his expulsion period. When he appealed to the Local Board, the Local Board dismissed the finding that the Student caused injury to another student, but upheld the Student's expulsion until June 1, 2008. The Student then filed an appeal to the State Board of Education.

On appeal, the Student claims he was denied due process because some of the testimony of one of the participants was not recorded. The Student also claims he was denied due process because he did not have an opportunity to cross-examine the witnesses or the students who provided written statements. The Student also claims that the written statements constituted inadmissible hearsay evidence. Additionally, the

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<sup>1</sup> See, *D. H. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2008-34 (Ga. SBE, Apr. 4, 2008), another case that arose from the same incident.

Student claims he was denied due process because there was a group hearing, which led to confusion. Finally, the Student claims that the school system violated local policy because he was not permitted to create a school bus behavior contract before being subjected to a disciplinary hearing.

During the hearing before the disciplinary tribunal, the Student did not raise the issues concerning the group hearing, the inability to cross-examine witnesses, the school bus behavior contract, or the introduction of the written statements. "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 claims that this standard should not be used because he was not represented by an attorney. The standard of review, however, is not one that has been created by the State Board of Education, but comes from the decisions of our appellate courts and the Student has not cited any case law that would permit or require appellate review of issues for the first time on appeal simply because of self-representation before a tribunal or local board. Since these issues were not raised before the disciplinary tribunal, the State Board of Education concludes that they cannot form the basis of any valid objection to the decision of the Local Board.<sup>2</sup>

The Student also claims that he was denied due process because, as shown by the record, the bulk of the testimony of one witness was not recorded. The Student claims that the witness testified that he did not hit the victim, which was contrary to the tribunal's finding. The Student claims that the failure of the school system to record the testimony of one of the witnesses deprived him of due process because the Local Board did not have all of the evidence before it when it made its decision to uphold the tribunal's decision, nor is all of the evidence available for the State Board of Education to review.

"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). In the instant case, both the bus driver and the victim testified that the Student struck the victim and the Student admitted that he created a bus disturbance. Although the testimony of the witness was missing from the transcript, the

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<sup>2</sup> Despite the Student's contentions, the record shows that the Student had an opportunity to cross-examine all of the witnesses. The written statements were hearsay and, therefore, were not proof of anything, but there was direct evidence in the form of testimony from the bus driver and the victim that supports the Local Board's decision. The policy regarding the school bus behavior contract is not a limitation on the bringing of disciplinary charges against a student.

tribunal heard the testimony of the witness and was able to determine the credibility of the witness. "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). Thus, even if the missing testimony was that the Student did not strike the victim, it would not change the scope of the review or the outcome. The State Board of Education, therefore, concludes that the failure to record the testimony of one witness did not deny the Student due process.

The Student also claims that his plea that he created a school bus disturbance was improperly obtained because the entire charge was not read to him during the hearing. The Student, however, was given advance notice of the charges in writing, so he cannot now claim that he did not know what the charge was when he submitted his plea. The State Board of Education, therefore, concludes that the failure to read the entire rule to the Student did not deny him due process.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the Student was not denied any of his due process rights. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of April 2008.

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William Bradley Bryant  
Vice Chairman for Appeals