

STATE BOARD OF EDUCATION

STATE OF GEORGIA

P. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2009-04
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by P. W. (Student) from a decision by the Fulton County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him through December 2008 and assign him to an alternative school after finding him guilty of possessing marijuana on school property. The Student claims that he is eligible for services under the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* ("IDEA") and should not be removed from school. The decision of the Local Board is sustained.

On May 5, 2008, the Student was discovered to be in possession of several bags of marijuana. The Student claimed that he found the marijuana in the boys' restroom. The Student was charged with possession of marijuana and with disobeying school rules.

A student disciplinary tribunal conducted a hearing and received testimony from the school resource officer who conducted the investigation. The school resource officer testified about the Student's possession and the testing of the drugs. The Student testified that he found the drugs in the boys' restroom at the beginning of the school day and carried the bags with him until he was discovered late in the school day. There was no evidence presented that the Student was enrolled in a special education program. The tribunal found the Student guilty of the charges, expelled him from regular school through the end of December 2008, and transferred him to an alternative school during the period of expulsion. The Local Board upheld the tribunal's decision when the Student appealed. The Student then appealed to the State Board of Education.

On appeal to the State Board of Education, the Student claims that he is eligible for special education services under the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.* and should not have been removed from regular school. As indicated above, however, there was no evidence that the Student was enrolled in a special education program, nor was any issue raised at the hearing concerning the Student's eligibility for special education. "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 State Board of Education must also confine its review to the record established before the tribunal and cannot receive any additional evidence. *See, Deiangelo E. v. Coffee Cnty. Bd. of Educ.*, Case No. 1991-21 (Ga. SBE, Sep. 12, 1991).

Based upon the foregoing and a review of the record, 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 due process. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2008.

William Bradley Bryant
Vice Chairman for Appeals