

witnesses. In addition, a list of the witnesses who would testify was given to the parents. The hearing before the Student Evidentiary Hearing Committee was conducted on March 14, 1989.

The witnesses testified that on morning of February 27, 1989, Appellant was walking with a group of other students in the hall prior to the start of classes. One of the other students, Tim, related that he had been served with a warrant based upon the complaint of the mother of another student, Cedric. Tim then asked if anyone knew Cedric. Cedric was pointed out as one of the students that were standing with another group of students in the hallway. As the two groups passed in the hallway, Cedric testified that Tim made a statement that he, Tim, was going to “get” Cedric and some of his classmates. There was testimony that Cedric responded by stating words to the effect “What are you going to do?” Appellant then walked towards Cedric. Neither of the students knew one another at the time. Appellant did not say anything and did not make any threatening actions, but simply looked at Cedric. Cedric testified that he did not feel intimidated by Appellant. Appellant then went to class.

Cedric left the school campus and began walking home. Along the way, he met another student. The two of them continued on to Cedric’s house, where they remained until almost 9:00 a.m. They then decided to return to the school. Along the way, the other student, Billy, found a replica of a .25 caliber automatic pistol and placed it into his coat pocket. They then proceeded to the school where they met another friend, Tony.

The three students were in the hallway when Appellant came out of the doorway from his second period class to deliver the attendance report to the Attendance Office. Cedric confronted Appellant. Billy then took out the pistol and handed it to Cedric. Cedric testified that he placed the pistol on the floor, but there was testimony that he attempted to strike Appellant with the pistol. Appellant testified that he lunged for the weapon because he feared for his life. The two of them began struggling. A female teacher appeared on the scene and attempted to quell the fighting by placing herself between the two students and demanding that they stop fighting. The

teacher was unaware of the presence of the pistol when she intervened. Appellant pushed her aside to get to Cedric. In the meantime, another teacher, a former policeman, was approaching the commotion. He observed Appellant push the other teacher. He also observed what he thought was a pistol and he moved to attempt to grab the pistol. The former policeman testified that the gun appeared to be a real automatic pistol. Two other male teacher arrived on the scene, and the three of them separated and detained Appellant and Cedric.

The Student Evidentiary Committee found Appellant guilty of all three charges and voted to suspend him from school for the remainder of the school year. Appellant appealed to the Local Board. The Local Board met on April 10, 1989, and voted to sustain the decision of the Student Evidentiary Committee and gave Appellant the option of attending an alternative school. Appellant then appealed to the State Board of Education.

PART III

DISCUSSION

Appellant first contends that he was denied due process because he was not advised of his right to have legal counsel. The record, however, shows that on March 3, 1989, and on March 10, 1989, Appellant's parents were sent letters that stated that Appellant had the right to legal counsel.

Appellant's third ground for appeal is that hearsay evidence was improperly admitted. The evidence was in the form of a written statement that was prepared by an assistant principal and read into the record by another assistant principal. The principal was not available for cross-examination. As a general rule, hearsay evidence is admissible in student disciplinary hearings since the strict rules of evidence of a court proceeding are not applicable. See, Georgia Board of Ed. Policies and Executive Procedures, BCAEH "Appeals Hearings". In the instant case, the statement said that the assistant principal observed the fighting and twice asked the students to stop fighting, but they continued to fight after Cedric had made contact with Appellant. She also

stated that “three male teachers were on the scene struggling to restrain [Appellant].” This last statement was not supported by the testimony of the male teachers that testified. According to their testimony, they restrained both students. One of them, the former policeman, was most concerned about obtaining possession of the gun rather than separating the students. The assistant principal’s statement did not make any mention of the gun. The statement was highly prejudicial since its entire thrust was to place the blame for the fight on Appellant. The statement, therefore, should not have been considered by the Student Evidentiary Committee since the evidence does not corroborate the fact that Appellant was responsible for the fight. Nevertheless, the statement could be admitted without causing reversible error because the strict rules of evidence do not apply.

Appellant’s fourth contention on appeal is that the evidence presented did not support the Local Board’s decision. In a student disciplinary hearing, the Local Board has the burden of proof. If, however, there is any evidence to support the decision of the Local Board, then that decision will be upheld on appeal if the decision does not violate the law or amount to an abuse of discretion. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11. In the instant case, the evidence does not support the decision of the Local Board.

The Student was charged with fighting, refusal to follow instructions, and school disturbance. The evidence is clear that Appellant stepped into the hallway of the school for a legitimate reason, to deliver the attendance report. He was accosted by three other students, one of whom displayed what appeared to be an automatic pistol. The Student with the gun initiated the action and Appellant, fearing for his life, attempted to wrest the gun away from the other student. Five teachers intervened and demanded that the students stop fighting, but only the former policeman testified that he saw the weapon. The Local Board maintains that there is evidence in the record that Appellant refused to obey the teachers when they demanded that he stop fighting, and that he was involved in a fight. Appellant, however, was faced with another

student who had what appeared to be an automatic pistol. He was on a legitimate errand for a teacher and had not provoked the incident. The action he took was entirely self-defensive in nature. When the two teacher yelled at him to stop, they had not obtained possession of the weapon; they were, in fact, unaware that a weapon was involved.

O.C.G.A. § 16-3-21 provides:

(a) A person is justified in threatening or using force against another when to the extent he reasonably believes that such threat or force is necessary to defend himself or a third person against the other's imminent use of unlawful force.

(c) Any rule, regulation, or policy of any agency of the state or any ordinance, resolution, rule, regulation, or policy of any county, municipality, or other political subdivision of the state which is in conflict with this Code shall be null, void and of no force and effect.

The evidence does not show more than that Appellant was attempting to defend himself against a dangerous weapon even while the teachers were telling him and Cedric to stop fighting. There was no evidence that any appreciable span of time elapsed during which Appellant continued to fight after policeman testified that he saw the weapon. The Local Board maintains that there is evidence in the record that Appellant refused to obey the teachers when they demanded that he stop fighting, and that he was involved in a fight. Appellant, however, was faced with another student who had what appeared to be an automatic pistol. He was on a legitimate errand for a teacher and had not provoked the incident. The action he took was entirely self-defensive in nature. When the two teacher yelled at him to stop, they had not obtained possession of the weapon; they were, in fact, unaware that a weapon was involved.

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PART IV
DECISION

Based upon the foregoing, the record presented, and the briefs and arguments of counsel, the State Board of Education is of the opinion that Appellant's procedural due process rights were denied because of the admission of prejudicial statements that were not relevant to the case, and that there was no evidence to support a finding that Appellant engaged in fighting, refusal to follow instructions, or created a disturbance when he defended himself against an attack by another student who was wielding what appeared to be an automatic pistol. The decision of the Local Board, therefore, is

REVERSED. Mr. Smith voted no.

This 10th day of August, 1989.

John M. Taylor
Vice Chairman For Appeals