

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

J.H.,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-43
	:	
BARTOW COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by J.H. (“Student”) from a decision by the Bartow County Board of Education (“Local Board”) suspending the Student from school through May 31, 2010, with the option to apply for admission to the Bartow Academy. The Local Board took these actions because it found that the Student violated the Local Board’s Code of Conduct by assaulting a teacher and creating a disturbance. For the reasons set forth below, this appeal is REVERSED.

I. BACKGROUND

The Student attends Adairsville High School. On or about September 30, 2009, the Student was entering the school cafeteria. The Student was approached by a teacher and directed to leave the cafeteria. The Local Board contends that the Student was not authorized to be in the cafeteria. The Local Board further contends that the teacher began to direct the Student out of the cafeteria, at which time the Student began cussing and hitting the teacher. On October 5, 2009, the Local Board sent the Student a charge letter stating that he was being charged with assault on a staff member and creating a disturbance. The Student requested a hearing, and the Local Board convened a hearing tribunal. At the hearing, the Local Board failed to offer any testimony from any witnesses to the incident. Rather, the Local Board offered witness statements from the teacher and other alleged eyewitnesses. The Local Board also showed the videotape of the incident to the tribunal. The Local Board has failed to include the videotape in the record before the State Board.

The Student was the only witness to testify at the hearing. The Student testified that the teacher shoved him and his neck snapped back. In response, the Student cursed the teacher and told him not to shove him so hard. The teacher then came at the Student and put his chest in the Student’s chest and pushed him back and told the Student to meet him out on the streets off the school campus so they could fight. The Student further testified that he reacted because the teacher kept putting his chest on the Student’s chest, and the Student then hit the teacher to keep him off his body. The Local Board did not offer any admissible evidence to rebut the Student’s testimony.

After hearing all the evidence, the hearing tribunal found that the Student violated the Code of Conduct and recommended suspending the Student until December 31, 2009, with the option to apply for admission to the Bartow Academy. The Local Board affirmed the decision of the hearing tribunal, but increased the punishment to a suspension until May 31, 2010.

II. ERRORS ON APPEAL

A. The Local Board failed to transmit and certify the record.

As an initial matter, the Local Board has failed to comply with the Rules of the State Board. Pursuant to Ga. Comp. R. & Regs. § 160-1-3-.04(e), the Local Board is required to transmit “the transcript of evidence and proceedings” and to certify that all materials are “true and correct.” In this case, the Local Board relied, in part, on a videotape of the incident involving the Student. However, the Local Board failed to transmit the videotape in the record submitted to the State Board. Furthermore, the Local Board failed to certify that the record transmitted is “true and correct.” Thus, pursuant to Ga. Comp. R. & Regs. § 160-1-3-.04(k), this appeal is DISMISSED and REVERSED against the Local Board, as it has failed to comply with the State Board’s Rules.

B. The Local Board’s decision is based on inadmissible hearsay evidence.

Even assuming this appeal was not dismissed on the basis set forth above, the State Board finds that the Local Board’s decision is not supported by admissible evidence. The Local Board¹ has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). If the Local Board meets its burden, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783, 785 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). “[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence.” F.W. v. DeKalb County Bd. of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998).

As set forth above, the Local Board must carry its burden of proving that the Student violated its rules. Scott G. v. DeKalb County Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 1988). This Board is required to affirm the decision of the Local Board if there is “any evidence” to support the decision. See Ransum, 144 Ga. App. at 785. The “any evidence” rule

¹ The Local Board asserts that this appeal should be dismissed pursuant to Ga. Comp. R. & Regs. § 160-1-3-.04(g, k) because the Student failed to file a brief. However, on January 11, 2010, the Student filed his request for oral argument, which contains his arguments on appeal, which this Board considers to be his brief. Thus, this assertion is without merit.

requires that the record contain admissible evidence to support the decision. McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 474 (1994).² Thus, this Board cannot rely on inadmissible hearsay to support a decision of the Local Board. Id.

In this case, the Student was charged with violating the Code of Conduct by cussing and assaulting a teacher. The only evidence offered by the Local Board to support these charges is the missing videotape and written statements from witnesses. Since the Local Board carries the burden to prove the Student's misconduct, therefore, these written statements could only be offered to prove the truth of the matter asserted in the statements. Hurston v. State, 194 Ga. App. 226 (1990). However, these statements are out-of-court statements made by persons who were unavailable for cross-examination. See L.S. v. Carrollton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007); see also McGahee, 214 Ga. App. at 474. Thus, the written statements are inadmissible hearsay. See Devane v. Thurmond, 300 Ga. App. 474, 476 (2009) (affirming long-standing holding that hearsay evidence presented at an administrative hearing is not probative).

Furthermore, "[i]n this state even in the absence of [an] objection, hearsay is without probative value to establish any fact." McGahee, 214 Ga. App. at 474, quoting Finch v. Caldwell, 155 Ga. App. 813, 815 (1980), citing Williams v. Piggly Wiggly Southern, 209 Ga. App. 490 (1993); see also Longstreet v. Longstreet, 205 Ga. 255 (1949); Collins v. State, 146 Ga. App. 855, 859 (1978). Thus, "[d]espite the absence of an objection by [the Student], the hearsay testimony offered by [the Local Board] was insufficient to establish whether [the Student] . . . engaged in prohibited conduct." McGahee, 214 Ga. App. at 474, citing Williams, 209 Ga. App. at 490-91.

² The facts in McGahee are strikingly similar to the facts of this case. McGahee involved an unemployment appeal in which the Court of Appeals reversed the decision of the superior court. The employer in McGahee sought to rely solely on written statements of witnesses in support of proving that the employee engaged in conduct which would not entitle the employee to unemployment benefits. Similar to this case, in an unemployment hearing the employer carries the burden of proof. See O.C.G.A. § 34-8-194(2)(A). Like this case, the employer offered written statements of witnesses to prove its case, but did not offer the testimony of the witnesses. Thus, the Georgia Court of Appeals found that the witness statements were inadmissible hearsay, and therefore could not be used under the "any evidence" rule as probative evidence. See McGahee, 214 Ga. App. at 474.

Moreover, in reviewing the Georgia hearsay law (O.C.G.A. § 24-3-1 et seq.), this Board cannot find any exception to the hearsay rule that in this case would allow it to consider written statements for the truth of the matter contained in them. Consequently, the decision of the Local Board is not supported by any admissible evidence.

In addition, as set forth above, the videotape of the evidence has not been included in the record. Moreover, at oral argument, the parties agreed that the videotape does not contain any audio of the statements allegedly made by the Student.

On the other hand, the Student contends that his conduct was in reaction to being assaulted by a teacher, which this Board construes as self-defense. This Board has recognized self-defense under similar circumstances. See T.P. v. Henry County Bd. of Educ., Case No. 2007-58 (Ga. SBE, April 2005); see also O.C.G.A. § 16-3-21. Thus, the only evidence in the record is the testimony of the Student. This evidence shows that the teacher shoved the Student and his neck snapped back. In response, the Student cursed the teacher and told him not to shove him so hard. The teacher then came at the Student and put his chest in the Student's chest and pushed him back and told the Student to meet him out on the streets off the school campus so they could fight. The Student further testified that he reacted because the teacher kept putting his chest on the Student's chest, and the Student then hit the teacher to keep him off his body.

The Local Board failed to offer any admissible evidence to rebut the Student's testimony. Thus, this Board must take those facts as true. Based upon these facts, the State Board must conclude that the Student acted in response to the actions of the teacher.³ The decision of the Local Board is not supported by admissible evidence and, therefore, the decision of the Local Board is REVERSED.

C. Level of Punishment.

The Student asserts that the discipline he received is excessive because the Local Board increased the punishment determined by the tribunal. "The State Board of Education . . . cannot adjust the level or degree of discipline imposed by a local board of education." B.K. v. Bartow County Bd. of Educ., Case No. 1998-33 (Ga. SBE, Sep. 1998). However, based upon the above findings, this issue is moot.

³ The State Board is not condoning the Student's reaction. However, this Board is legally bound by admissible evidence.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence does not support the decision of the Local Board, and it is therefore **REVERSED**.

This _____ day of March, 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS