

STATE BOARD OF EDUCATION

STATE OF GEORGIA

E. R.,	:	
	:	
Appellant,	:	CASE NO. 2011-40
	:	
vs.	:	
	:	
SAVANNAH-CHATHAM COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by E. R. (Student) from a decision by the Savannah-Chatham County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the 2010-2011 school year, with the option of attending alternative school during the period of expulsion, after finding him guilty of aggravated assault. The Student claims that the statutes under which he was found guilty are inapplicable to him because he is underage. The Local Board’s decision is SUSTAINED.

Because he threatened a police officer with a knife at his home, the police charged the Student with aggravated assault. Upon learning of the incident, the school system also charged the Student with aggravated assault and conducted a student disciplinary hearing. The hearing officer found the Student guilty and expelled him from regular school for the remainder of the 2010-2011 school year with the opportunity to attend an alternative school during the period of expulsion. The Local Board upheld the hearing officer’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 the disciplinary tribunal hearing officer misapplied the statutes under which he was found guilty because he is underage. The Local Board argues that the Student was charged with aggravated assault, a felony under the provisions of O.C.G.A. § 15-11-63. Thus, the Local Board argues, the provisions of O.C.G.A. § 20-2-768 permit the Local Board to expel the Student and assign him to an alternative school. The Local Board further argues that O.C.G.A. § 20-2-768 does not require a student to be found guilty of a crime, but, instead, there merely has to be “information filed” that a student has committed a crime.

O.C.G.A. § 20-2-768 provides, in part:

Each local board of education is authorized to refuse to readmit or enroll any student who has been suspended or expelled for being convicted of, being adjudicated to have committed, being indicted for, or having information filed for the commission of any felony or any delinquent act under Code Section 15-11-28

which would be a felony if committed by an adult. If refused readmission or enrollment, the student or the student's parent or legal guardian has the right to request a hearing pursuant to the procedures provided for in Code Section 20-2-754.

Even if only the filing of information is required, O.C.G.A. § 20-2-768 requires either (1) the commission of a felony, or (2) the commission of a delinquent act under the provisions of O.C.G.A. § 15-11-28 that would be considered a felony if committed by an adult. The disjunctive “or” creates two conditions under which a student can be refused readmission or enrollment.

The school system charged the Student with the commission of aggravated assault, a felony under the provisions of O.C.G.A. § 16-5-21, which defines aggravated assault as:

A person commits the offense of aggravated assault when he or she assaults: ...(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury,

The definition of aggravated assault is not limited to persons over a certain age; it merely requires an assault with a deadly weapon that is likely to result in serious bodily injury committed by anyone, regardless of age. Although the Student argues that O.C.G.A. § 15-11-63, which defines “designated felony acts” under the juvenile justice system, limits aggravated assault to children older than twelve, it does not appear that O.C.G.A. § 20-2-768 limits its application to only designated felony acts. The Student’s argument presupposes that the initial analysis begins with O.C.G.A. § 15-11-63, which excludes the Student since he is only 10-years of age, before any consideration can be given to the provisions of O.C.G.A. § 20-2-768 and O.C.G.A. § 16-5-21. Since, however, we are dealing with the maintenance of good order within the schools, and not with the juvenile justice system, the analysis must begin with the provisions of O.C.G.A. § 20-2-768, which, as pointed out, above, only requires the filing of information regarding the commission of a felony.

Based upon the foregoing, the State Board of Education concludes that the Local Board correctly applied the provisions of O.C.G.A. § 20-2-768 in expelling the Student. Accordingly, the Local Board’s decision is SUSTAINED.

This _____ day of April 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS