STATE BOARD OF EDUCATION

STATE OF GEORGIA

C. H. and J. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2004-49**
	:	
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by C. H. and J. W. (Students) from decisions by the Henry County Board of Education (Local Board) to uphold the decisions of a student disciplinary tribunal that found them guilty of fighting. C. H. was expelled from regular school until the end of the first semester of the 2004-2005 school year, with the option of attending an alternative school during the expulsion period, and J. W. was given an eight-day in-school suspension until April 1, 2004. The Students claim that the Local Board's policies are unconstitutionally vague and overbroad. The Local Board's decisions are sustained.

On March 12, 2004, the Students became involved in a fight in the hallway with several other students moments before classes were to begin. Many students arrived late to their classes because they stopped to witness the fight. The Students were charged with fighting and with causing the disruption of school operations.

At the hearing before a student disciplinary tribunal, the Students, who are brothers, pleaded self-defense. They also raised the issue that the charges were unconstitutionally vague and overbroad such that a person of ordinary intelligence could not tell what activity was prohibited. The tribunal, however, found them guilty and expelled C. H. until the end of the first semester of the 2004-2005 school year and gave J. W. in-school suspension from March 24, 2004 through April 1, 2004. The Local Board upheld the tribunal's decisions when the Students appealed. The Students then filed an appeal to the State Board of Education. Their appeals were consolidated because of the mutuality of facts and issues.

On appeal to the State Board of Education, the Students claim the policies defining fighting and disrupting a school are unconstitutionally vague and overbroad, and that the tribunal improperly denied them the opportunity to conduct a thorough and sifting cross-examination. The Local Board claims that the policies are not vague and overbroad, and that the denial of the right to cross-examine a witness was a harmless error if it was an error. Additionally, the Local Board claims that the appeal by C. H. is

moot because no relief is available to him since his in-school suspension period is over and he has graduated from high school.

The Henry County student handbook lists "fighting" as a violation that can result in a disciplinary hearing. Secondary Handbook, Henry County Schools, p. 17, No. 12 (2003-2004). No further definition of fighting is contained in the handbook. The Students contend that the term does not adequately give them notice of what conduct is prohibited. Specifically, they claim that the rule does not tell them that acting in self-defense is a violation of the rule. The Students argue that the rule does not tell them whether they have to stand and absorb the blows of another, even to the point of death, or whether they are guilty of an infraction if they lift a finger in self-defense. They argue that this makes the rule unconstitutionally vague.

The Students also argue that the rule is overbroad because it subjects all of the members of the football team and wrestling team to sanctions each time they practice, play a game, or have a wrestling match. The Students also argue that members of the chess team and debate team are subject to sanction under the rule because they are "fighting" to win each time they debate or have a chess match.

The Students are grasping too hard to find a reed upon which they can float away and escape the consequences of their actions. While students need to know what activities are prohibited, the rules and policies governing their conduct do not need to have the particularity of a criminal statute. Although it is possible to produce extreme scenarios that can be brought within some of the secondary dictionary definitions of "fight," the question is whether it is reasonable to know that the conduct is prohibited.

There should be no question that a prohibition against fighting reasonably means that students should not engage in fisticuffs in the hallway, as the Students did. Conversely, it would be unreasonable to conclude that the ordinary person would assume that a prohibition against fighting would mean a prohibition against engaging in physical sports or intellectual contests. We, therefore, conclude that the Local Board's prohibition against fighting is neither vague nor overbroad and provides the students with all of the constitutional notice required.

The lack of any reference to self-defense also does not cause the rule to be vague or overbroad. Self-defense, as a right, is allowed by O.C.G.A. § 16-3-21 and does not have to be repeated in the rule.[1] The rule does not make self-defense subject to disciplinary measures and the evidence did not support the Students claim of self-defense.

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[1] O.C.G.A. § 16-3-21(a) permits self-defense and O.C.G.A. § 16-3-21(b) provides: "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 section shall be null, void, and of no force and effect." There was no evidence that the Local Board has attempted to limit the use of self-defense as a justification under its rules.

The Students also claim that the prohibition against disrupting school operations is unconstitutionally vague and overbroad. The Students argue, for example, that the rule would prohibit a student from pulling a fire alarm upon spotting a fire in the school, and a student could be punished for having a seizure and collapsing in the hallway. As with the prohibition against fighting, while scenarios can be crafted where permissible conduct could result in a disruption of school operations, the question is whether it is reasonable to know that the conduct is prohibited. Certainly any breathing student knows that if they engage in a fight in the hallways during school hours there will be a disruption in the operation of the school as a result of other students flocking to observe the scene. In the instant case, there was evidence that the fight disrupted the operation of the school because other students were late for class because they stopped to observe the fight. We, therefore, conclude that the Local Board's prohibition against interfering with the operation of the school is not unconstitutionally vague or overbroad.

The Student's also contend that they were denied due process because the hearing officer refused to allow them to cross examine two students about whether the students had obtained leniency from the administration in return for their testifying against the Students. Even if the Students should have been allowed to conduct their cross examination, they have not shown where they were harmed by their inability to ask questions about whether the other students obtained any leniency. The only purpose in determining whether the students obtained any leniency was to attack their credibility. Even if the testimony of the two students was entirely disregarded, there was sufficient other testimony to establish that the Students engaged in a fight in the hallway and disrupted school operations as a result. The Students, therefore, did not suffer any harm as a result of their inability to cross examine the witnesses about whether they had obtained any leniency.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's regulations prohibiting fighting and disruption of the school are not constitutionally vague and overbroad, and the Students have not shown any harm that resulted from the hearing officer limiting their cross examination of two witnesses. Accordingly, the Local Board's decisions to affirm the tribunal's decisions to suspend J. W. and expel C. H. are
AFFIRMED.

This _____ day of September 2004.

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William Bradley Bryant
Vice Chairman for Appeals