

STATE BOARD OF EDUCATION

STATE OF GEORGIA

B. W.,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-24
	:	
HALL COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by B. W. (Student) from a decision by the Hall County Board of Education (Local Board) to expel him from regular school for the remainder of the 2004-2005 school year with the option of attending an alternative school during his expulsion period after a student disciplinary tribunal found him guilty of battery against another student and suspended him for the remainder of the first semester of the 2004-2005 school year. The Student claims that he acted in self-defense. The Local Board’s decision is sustained.

On October 4, 2004, the Student was standing in line at the lunchroom when another student, C. A., stepped on his shoelace and would not move. The Student then uttered a racial slur. An assistant principal suspended the Student for three days, but postponed the suspension for two days. The next day, October 5, 2004, the Student met C. A. in the hallway of the high school. The Student hit C. A. three or four times in the face and caused a gash that required three stitches above C. A.’s right eye. C. A. did not return any of the blows but went back up against a wall. A teacher stepped in and stopped the attack at that time. The principal charged the Student with assault and battery.

A three-member student disciplinary tribunal found the Student guilty of assault and battery, suspended the Student for the remainder of the first semester of the 2004-2005 school year and placed him on strict probation for the remainder of the school year. The tribunal also gave him the option of attending an alternative school during the period of suspension. When the Student appealed to the Local Board, the Local Board increased the punishment to expulsion for the remainder of the 2004-2005 school year. The Student then filed an appeal to the State Board of Education.

The Student claims that the tribunal permitted hearsay evidence, the hearing officer improperly denied his motion for dismissal at the close of the Local System’s presentation of evidence, he was only acting in self-defense, and the Local Board should not have increased his punishment from that imposed by the tribunal.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

There was testimony from both the Student and the victim that the Student hit the victim in the face three or four times. The hearsay evidence presented by the Local System, which consisted of testimony by the principal and the school resource officer, corroborated the testimony of the Student and the victim. In addition, a teacher testified that she came upon the fight as it was occurring, she saw the students facing one another, and she saw the blood coming from the cut above the victim's eye. Although she did not see the actual fight, there was circumstantial evidence to indicate that the two had engaged in a fight. Again, the hearsay evidence corroborated the circumstantial evidence that a fight had occurred between the two.

Although hearsay evidence is without any probative value in Georgia, its admission in an administrative hearing is not reversible error and it can be admitted to support direct evidence. *See, e.g., Sherry B. v. DeKalb County Board of Educ.*, Case No. 1995-41, (Ga. SBE, Nov. 9, 1995). The hearing officer, therefore, did not commit any error in allowing the admission of the hearsay evidence.

The Student claims that the hearing officer improperly denied his motion for an involuntary dismissal at the end of the Local System's case in chief. O.C.G.A. § 9-11-41(b) provides that in a trial before a judge without a jury, the judge can dismiss the case if the law and facts presented do not show any basis for relief, but the judge can decline to render a judgment until the close of all the evidence. Since it appears that dismissal is discretionary with the trial judge, and there was circumstantial evidence presented by the Local System that the Student engaged in a fight with another student, it was not error to decline to render judgment at the close of the Local System's case.

The Student also claims that he acted in self-defense. The fact that the victim is six foot three inches tall and weighs 175 pounds and the Student is only five foot nine inches tall and weighs 140 pounds is an indication that he would not start a fight. The tribunal members, however, are the finders of fact and the State Board of Education cannot change those findings if there is any support for their decision. There was testimony that the Student threw the first punch, that the victim did not throw any punches, and that the Student had been told to avoid any contact with the victim because of the incident on the previous day. The tribunal could, therefore, find that the Student did not act in self-defense but, instead, was the aggressor.

The Student also claims that the Local Board should not have increased his punishment. A local board of education, however, has the authority to increase the punishment if it provides an explanation and the increase in punishment does not rely upon

any new evidence. *Ryan B. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1995-24 (Ga. SBE, Aug. 10, 1995). In the instant case, the Local Board provided an explanation for the increased punishment. The Local Board, therefore, acted within its authority.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the Local Board did not deny the Student due process. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of April 2005.

William Bradley Bryant
Vice Chairman for Appeals