

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>T. P.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-25</b>
	:	
<b>HENRY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by T. P. (Student) from a decision by the Henry County Board of Education (Local Board) to uphold the decision of a student disciplinary hearing officer to expel him until the end of the 2004-2005 school year after finding him guilty of fighting. The Student claims that he only acted in self-defense and the Local Board's failure to recognize self-defense is an unconstitutional deprivation of his due process rights. The Local Board's decision is reversed.

On November 5, 2004, a student, C. W., confronted the Student before the first period class and taunted him. The Student ignored the taunt and told a teacher, who had stepped in, that C. W. wanted to fight. The Student then talked with his first period teacher and told her about C. W. wanting to fight. Between the first and second period class, a group of students taunted the Student but he did not react to them. A teacher, who was walking behind the Student, witnessed the harassment and spoke to the Student about it but did not take any action because she needed to get to her class. The Student then met C. W. in the hall and they began pushing one another. Another teacher stepped in and stopped the confrontation and the students went to second period class. Between second and third period class, C. W. came up to the Student in the hallway and punched the Student in the face while the Student was looking in another direction. C. W. continued to punch the Student and the Student then began to punch back. The Student was knocked to the floor and C. W. got on top of him and continued to punch him until another student stepped in and pulled C. W. to the side. Both students were charged with 1) physically abusing a student; 2) being in a fight, and 3) behavior detrimental to learning.

C. W. testified that he struck the Student without any provocation, although he also testified that they had been involved in the argument before the first period class. Except for C. W., all of the witnesses at the student disciplinary hearing testified that the Student acted in self-defense, that C. W. had hit him without warning and without provocation and continued to strike him. The hearing officer, nevertheless, disregarded the self-defense aspect and found the Student guilty of all three charges. The hearing officer expelled the Student through the end of the 2004-2005 school year, with the

option of attending an alternative school during the expulsion period. The Local Board upheld the hearing officer's decision and the Student filed an appeal with the State Board of Education.

The Student claims that all of the evidence shows that he acted in self-defense, that his hitting back at C. W. was, therefore, justifiable and that the Local Board's zero-tolerance policy results in a denial of his rights granted under O.C.G.A. § 16-3-20 and § 16-3-21, the Constitution of the State of Georgia, the Constitution of the United States, and 42 U.S.C.A. § 1983.

"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).

O.C.G.A. § 16-3-21 provides that:

- (a) A person is justified in ... using force against another when and to the extent that he or she reasonably believes that such threat or force is necessary to defend himself ... against such other's imminent use of unlawful force ....
- (b) A person is not justified in using force under the circumstances specified in subsection (a) of this Code section if he: (1) Initially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant; (2) Is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or (3) Was the aggressor or was engaged in a combat by agreement unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

The evidence shows that the Student was attacked without provocation or warning and that the aggressor pressed forward with the attack. The Student did not provoke the use of force by his attacker, he was not involved in the commission of a felony, and he was not engaged in combat by agreement. The Student did not have an opportunity to withdraw from the scene since the aggressor pressed forward and continued to hit the Student and knocked the Student to the ground. The evidence shows that the Student attempted to avoid any confrontation while in school.

The Local Board argues that the Student was not justified because he had engaged in a minor altercation with C. W. after the first period class and he did not inform an administrator about the altercation.<sup>1</sup> The Local Board also argues that the disciplinary hearing officer could have found that the Student failed to withdraw from the combat and failed to effectively communicate to C. W. of his intent to withdraw. Since the Student was not the aggressor and was not involved in combat by agreement, the statute does not require him to withdraw. There also was no evidence that the Student had an opportunity to withdraw. On the contrary, the evidence showed that C. W. pressed forward and continued to hit the Student after hitting him in the face, striking his nose, in a surprise attack that the Student was completely unaware was going to occur. “Justification, if established ... should always result in acquittal.” *Gordy v. State*, 93 Ga. App. 743, 745, 92 S.E.2d 737, 739 (1956). Here, the evidence shows that the Student was justified in striking back to fend off the blows being showered upon him by his attacker.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local System failed to carry its burden of proof and that the Student was justified in attempting to repel the blows from the other student. Accordingly, the Local Board’s decision is REVERSED.

This \_\_\_\_\_ day of April 2005.

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William Bradley Bryant  
Vice Chairman for Appeals

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<sup>1</sup> There was a teacher present at the altercation. The teacher stepped in and stopped the students from pushing one another. Thus, there were at least three teachers who were aware that the Student was having problems with some other students: the teacher who intervened before the first period class, the Student’s first period teacher who he discussed the situation with and who observed the taunting in the hallway, and the teacher who intervened in the pushing after the first period class. The Local Board does not explain why the Student should have informed more than three teachers about the situation.