

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>D.B.,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2008-75</b>
	:	
<b>GWINNETT COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by D.B. from a decision by the Gwinnett County Board of Education (“Local Board”) to suspend D.B. from school until January 1, 2009 with the option of attending the Local Board’s alternative school. Specifically, the Local Board found that D.B. violated the Local Board’s rules by fighting, disrupting school, and causing physical injury to another student.

**I. FACTUAL BACKGROUND**

On March 24, 2008, D.B. and another Student were in their Business Education class. The Business Education teacher observed the two students arguing and disrupting the class. Consequently, she took both students out of the class and began walking them to the administration office. While walking down the hall, D.B. and the Student again began arguing and cussing at one another. The hallway has a video surveillance camera that recorded the actions of both students. D.B. pointed his finger at the Student’s face. The Student hit D.B. in the face or head. D.B. pushed the Student into the girl’s restroom. The Student then came after D.B.. D.B. then grabbed the Student and pushed her against the lockers and walls up and down the hallway.

In the video, it is unclear as to whether D.B. punched or hit the Student. However, the Business Education teacher testified that both students exchanged hits during the altercation. The video does show D.B. continuing to pursue the Student and grabbing at her hands and physically accosting her. The video also shows D.B. pursuing the Student down the hall after she ran away from D.B..

According to the Discipline Secretary, D.B. was led into her office on at least one occasion, but D.B. exited another door and again began fighting with the Student. This incident does not appear on the video. It is unclear whether this incident was not within the reach of the video surveillance camera. D.B. denies re-entering the hallway to fight. Rather, D.B. contends that he only re-entered the hallway to retrieve his hooded jacket. The video confirms D.B.’s

version. According to the Business Education teacher and Discipline Secretary, the Student was physically bruised on the face from the fight.

## **II. ERRORS ASSERTED ON APPEAL**

### **A. Failure to investigate and provide alleged exculpatory evidence.**

D.B. asserts that the Local Board failed to properly investigate the incident giving rise to this matter, resulting in a biased and inaccurate presentation of evidence to the hearing panel. D.B.'s assertion is based upon his contention that the Local Board failed to offer evidence from other potential witnesses, which would support D.B.'s defense of self-defense. However, "[a] school system . . . is not required to call any particular witnesses or to have them available for cross-examination." A.A. v. Rockdale Cnty. Bd. of Educ., Case No. 2006-56 (Ga. SBE, May 2006).

Moreover, the record shows that D.B. was provided notice of his right to subpoena witnesses. Thus, "[t]he Student had the right to subpoena witnesses and the record does not show that he availed himself of that right." Id. Therefore, the Local Board did not err by failing to investigate the incident and providing the evidence D.B. alleges would support his defense.

### **B. Evidence does not support the decision.**

D.B. asserts that the evidence does not support the decision of the Local Board. The Local Board has the burden of proof when it charges a student with an infraction of its rules. Scott G. v. DeKalb Cnty. Bd. of Educ., Case No. 1988-26 (Ga. SBE, Sep. 12, 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 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).

In this case, the Local Board provided testimony regarding the fighting, disruptive conduct and physical injury caused upon the Student. In addition, the videotape of the incident between D.B. and the Student clearly shows D.B. physically accosting the Student and pursuing her down the hall. While the videotape does not appear to be consistent with some of the testimony, it is unclear if this is because some events were not within the view of the surveillance camera.

Nevertheless, the evidence shows that D.B. engaged in disruptive behavior by arguing and cussing in the classroom and hallway. In addition, the evidence shows that D.B. physically accosted the Student and pursued her up and down the hall. Furthermore, both the Business Education teacher and Discipline Secretary testified that the Student was physically bruised on

the face from the fight. Finally, D.B. admitted to knowing and violating the Local Board's rules regarding fighting, disrupting school, and causing physical injury to another student.

In this case, the record contains admissible evidence<sup>1</sup> showing that D.B. was fighting, engaging in disruptive conduct and caused physical injury upon the Student. Thus, the decision of the Local Board is supported by admissible evidence.

### **C. Self-Defense.**

D.B. contends that his actions were in self-defense. This Board has recognized self-defense where evidence was offered by D.B. to support self-defense. T.P. v. Henry Cnty. Bd. of Educ., Case No. 2005-25 (Ga. SBE, April 2005). In this case, D.B. admits that he engaged in fighting. D.B. further failed to offer any evidence at the hearing showing that he was only defending himself. Moreover, the evidence as set forth above shows D.B. aggressively pursuing the Student. While the Student may have thrown the first punch, D.B. had the opportunity to refrain from physically engaging and pursuing the Student, but he chose not to do so. Thus, "[a]lthough D.B. may have initially only defended himself, he turned into the aggressor, thus taking his actions out of the realm of self-defense." C.W. v. DeKalb Cnty. Bd. of Educ., Case No. 1999-33 (Ga. SBE, Sep. 2005).

## **III. CONCLUSION**

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is therefore **SUSTAINED**.

This \_\_\_\_\_ day of September 2008.

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WILLIAM BRADLEY BRYANT  
VICE CHAIRMAN FOR APPEALS

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<sup>1</sup> D.B. challenges the use of the written statement by the Local Board of another teacher from Duluth High School. The Board agrees that the statement is inadmissible hearsay. It is an out-of-court statement made by a person that was unavailable for cross-examination. See L.S. v. Carrollton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007); McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994); O.C.G.A. § 24-3-1. However, as set forth above, the record contains admissible evidence supporting the decision of the Local Board. Thus, the admission of this statement was harmless error. M.H. v. Gwinnett Cnty. Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000).