

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

A.H.,	:	
	:	
Appellant,	:	
	:	CASE NO.: 2019-39
v.	:	
	:	DECISION
LIBERTY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by A.H. ("Student") from the decision of the Liberty County Board of Education ("Local Board") to expel her for the remainder of the 2018-2019 school year through the end of the first semester of the 2019-2020 school year for fighting. For the following reasons, this decision is **REVERSED**.

I. FACTUAL BACKGROUND

The incident in question occurred at the end of the school day on March 21, 2019, at Bradwell Institute. The students were outside the school on the sidewalk in the area where they board the school buses. The assistant principal, Dr. Crow, was directing the school buses through the area. She noticed a large group of students on the sidewalk, and there was general arguing amongst the crowd.

The Student, a tenth grader at the school, was arguing with another student, "H."¹ Dr. Crow walked over to where the Student and "H" were arguing and asked all of the students to move back off the sidewalk. The Student's friends, O.H. and T.E., stepped between the Student and the girls from the other group. Dr. Crow then called over Officer Fulwood, the school resource officer ("SRO"), to diffuse the crowd. Dr. Crow returned to the bus ramp to direct traffic.

As Officer Fulwood walked through the crowd, he saw several groups of girls arguing. He directed the students to move back and away from each other. Initially, the Student continued to argue with "H", but she ultimately stepped back as directed by the SRO. The Student walked away from "H" and over to Dr. Crow. Dr. Crow told the Student to wait a minute while she released the buses. The Student remained near Dr. Crow. Shortly thereafter, "H" left the area where Officer Fulwood was and walked quickly toward the Student. Dr. Crow stood between the two girls and grabbed "H" by the shoulders. The Student and "H" began arguing again. "H" went around Dr. Crow and hit the Student in the head. The Student hit "H" back, and a fight ensued. Almost immediately thereafter, a second girl, C.C., began hitting the Student from behind. Then 1-2 more girls joined in and began hitting the Student. A teacher, Mr. Murphy, tried to intervene, but he

¹ At the student disciplinary hearing, the student "H" was identified by her first name only. For purposes of this decision, she will be referred to by her first initial.

ended up on the ground. Meanwhile, the group of girls continued pounding the Student until a male student was able to pull her away.

O.H. is one of the Student's friends. She testified that, in the prior semester, the group of girls, who were beating the Student, had been instructed by the previous principal to stay away from O.H., the Student, and their circle of friends. Nevertheless, on March 20, 2019, one of the girls in "H's" group bumped the Student on the bus ramp. Then, at the end of the school day on March 21, 2019, O.H. and her friends were still in the common area of the school. Although, O.H. usually walks outside with the Student, that day the Student had already gone outside to the bus ramp. "H" and her friends were also in the common area. One of them pointed to O.H. and said that the other three (O.H. and her friends) were inside. Even though they do not ride the bus, O.H. overheard one of the girls in H's group say we might as well go onto the bus ramp. When O.H. got to the bus ramp, "H" and her friends were already there. "H" and her friends tried to get between O.H. and the Student. One of the girls was saying to the Student, "What you going to do? What you going to do?"

II. PROCEDURAL HISTORY

The Student was charged with fighting. She was suspended from school for 10 days pending the outcome of a school disciplinary hearing.

The disciplinary hearing took place on March 29, 2019, before a school disciplinary hearing officer. The Student contended that she was not guilty of fighting and that she acted in self-defense.

The disciplinary hearing officer found the Student guilty of fighting. He expelled the Student for the remainder of the 2018-2019 school year through the end of the first semester of the 2019-2020 school year, with the option to enroll in alternative school.

The Student appealed the decision of the disciplinary hearing officer to the Local Board. The Local Board upheld the disciplinary hearing officer's decision.

The Student has appealed to the State Board of Education ("State Board").

III. ISSUES ON APPEAL

Was the Student guilty of fighting, and therefore should she be expelled until January 2020?

IV. DECISION

A. Standard of Review

In reviewing this appeal, the State Board must apply the "any evidence rule." Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. *See Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). *See also, Chattooga*

Cnty. Bd. of Educ. v. Searels, 302 Ga. App. 731, 691 S.E.2d 629 (2010). This Board will not substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board “grossly abused its discretion or acted arbitrarily or contrary to law.” *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017); *see also*, *King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013). An abuse of discretion occurs “if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence.” *S.G.*, 301 Ga. at 798, 804 S.E. 2d at 432.

B. The Local Board’s Decision

1. Fighting

The Student was found guilty of fighting. Toriano Gilbert, the principal at Bradwell Institute, represented the school district at the hearing. He stated that the Liberty County School System provides a definition of fighting in the code of conduct; however, he did not introduce the code of conduct into evidence.

The Student’s mother, Mrs. H, represented the Student at the disciplinary hearing. In her opening statement, Mrs. H referred to the student handbook as follows: “According to the Bradwell Student Handbook SC-08, fighting is defined as mutual participation in a fight involving physical violence where there is no one main offender and no major injury. This does not include verbal confrontation, tussles, or other minor confrontations.” The handbook was not introduced into evidence, and therefore, the State Board cannot determine whether Mrs. H’s statement correctly recites the rule regarding fighting.

The Local Board has the burden of proof as to its charge that the Student was fighting. *J.H. v. Bartow Cnty. Bd. of Educ.*, Case No. 2010-43 (Ga. SBE, Mar. 2010); *Scott G. v. Dekalb Cnty. Bd. of Educ.*, Case No. 1988-26 (Ga. SBE, Sept. 1988). In order to prove that the Student violated the code of conduct, it was incumbent upon the school district to introduce the rule into evidence, which it failed to do. Nevertheless, the disciplinary hearing officer found the Student guilty of fighting. In the absence of evidence of the pertinent rule upon which the Student was charged and found guilty, the State Board cannot affirm the Local Board’s decision.

2. Self-Defense

Even if the Student were fighting as defined by the school district, the Student claimed that she acted in self-defense. In reaching his decision, the disciplinary hearing officer considered and rejected the Student’s self-defense claim. Following is an exchange between the disciplinary hearing officer and the Student’s parents regarding self-defense:

Disciplinary Hearing Officer:

We saw that she [Student] did not start up the thing by throwing the first blow.

Mrs. H:

Correct

Disciplinary Hearing Officer:

But I'm hardly ever touched by who threw the first blow, who threw the last blow, or who won or who lost. I never asked those questions because the only thing that the school is charging her with is

Mrs. H:

Fighting

Disciplinary Hearing Officer:

Is fighting and she said she wasn't guilty. But by her statement, by his statement, and all the video that I've seen she was involved in fighting. Fighting is the key thing to me.

Mrs. H:

But by definition ... I'm going to disagree, because by definition she was not fighting, she was assaulted and she was protecting herself.

Disciplinary Hearing Officer:

No, she wasn't.

Mrs. H:

You don't consider someone walking up on her and hitting, would you like to see the video I have of the girl walking up on her?

Disciplinary Hearing Officer:

No, ma'am. If she was defending herself she would have gotten away from the child when the assistant principal asked her to separate the two. She should have gotten away then and nothing would have happened. The other girl came back at her because of something she said to the girl that aggravated the girl and the other girl had said some things that aggravated her. So yes ma'am, we expected something to happen when things like that happen.

Mrs. H:

But you shouldn't expect that a verbal altercation lead to a physical aggression.

Disciplinary Hearing Officer:

My thing is...

Mrs. H:

One second please.

Disciplinary Hearing Officer:

...My thing is defending herself.

Mrs. H:

She was defending herself.

Disciplinary Hearing Officer:

But any time you're fighting you're defending yourself. The other girl could say the same thing to me. When she gets over here she's going to say I was defending myself.

Mr. H:

But, sir, you see the evidence strictly shows that she [Student] got assaulted first.

Disciplinary Hearing Officer:

She ["H"] threw the first lick but that don't mean that she was, I mean...

Mr. H:

So what we're saying is we can have an altercation, you and I can have an altercation, you hit me in the face, and it's acceptable?

Disciplinary Hearing Officer:

Say again now

Mr. H:

You and I are having a, just hypothetical, You and I or me and somebody else are having a disagreement on the road, I get punched in the face, you're telling me I can't defend myself?

Disciplinary Hearing Officer:

No. She [Student] had Dr. Chow there, she had Officer Fulwood there, what you have

Mr. H:

Can I show you my video?

Disciplinary Hearing Officer:

... She [Student] got punched in the face. And they saw this, they would have seen it, they would have reacted to this thing but she did not defend herself by hitting back. When she hit back, that girl hit her, when she hit back her hand was just as dirty as the other girl hands were. So the same thing I do to the other girl I have to do to her.

The fact that the Student was fighting was key for the disciplinary hearing officer. He did not consider it self-defense that the Student hit "H" back. Instead, according to the hearing officer, hitting back made the Student's hands just as dirty as "H's." The disciplinary hearing officer's statement, however, is contrary to Georgia law. The fact that the Student engaged in a fight does not constitute a code of conduct violation if her actions were justified as self-defense. *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 804 S.E.2d 427 (2017).

Further, according to the disciplinary hearing officer, the Student did not act in self-defense because she failed to walk away when Officer Fulwood told the girls to separate. A student is not required to retreat when she reasonably believes that she is in imminent risk of harm. *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 804 S.E.2d 427 (2017). Nevertheless, the Student did walk away from “H” as instructed by Officer Fulwood and went directly to the assistant principal. “H” went to where the Student was and hit the Student. The Student acted in self-defense.

The Local Board argues that the Student was engaged in mutual combat by agreement, which negates a self-defense claim. *See* O.C.G.A. § 16-3-21 (b) (3). The evidence does not support the Local Board’s position. The Student had already walked away from “H” and gone to where Dr. Crow was directing the school buses. It was “H” who walked quickly over to the Student, failed to stop when grabbed by Dr. Crow, went around Dr. Crow, and struck the Student in the head. There is no dispute that the Student hit “H” back, but, based on the evidence and the law, she was entitled to do so. Moreover, the Student was not only defending herself from “H,” she was also defending herself from C.C., who attacked her from behind, and 1-2 other girls who joined in. This was not mutual combat by agreement, but rather, it was a full-blown attack on the Student.

The Local Board also argues that the students were provoking each other. It relied upon the State Board’s decision in *A.S. v. Henry Cnty. Bd. of Educ.*, Case No. 2012-78 (Ga. SBE, Nov. 2012) to support its position. In *A.S.*, the student was disciplined for fighting on a school bus. She and another student were involved in a confrontation at school that day. An assistant principal had warned them not to fight. Nevertheless, they fought on the bus that afternoon. Unlike the instant case, in *A.S.*, the students stated that they wanted to fight, and they each told the other to strike first. Under those facts, the State Board found that the student either provoked the fight or engaged in mutual combat, both of which negate self-defense.

Moreover, pursuant to O.C.G.A. § 16-3-21 (b) (1), provocation occurs when a person “[i]nitially provokes the use of force against himself with the intent to use such force as an excuse to inflict bodily harm upon the assailant.” The Student argued with “H,” but there is no evidence that the Student provoked a fight. In fact, according to O.H.’s testimony, it was the other girl who asked the Student, “What you going to do?” The testimony and videotape recordings show that the Student walked away and went directly to Dr. Crow. It was “H” who pursued the Student. The Local Board’s provocation argument is without merit.

Lastly, the Local Board argues that the Student is to blame for this incident because she argued with “H.” It is undisputed that the Student engaged in an argument with “H.” It is also irrelevant. The Student was not charged with arguing.

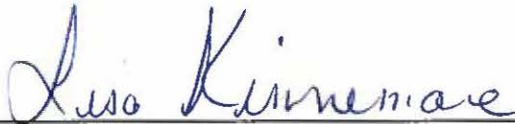
The Student has the burden of proof as to her claim of self-defense. *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 804 S.E.2d 427 (2017). Based on the evidence and the relevant law, the Student met her burden of proof. The State Board understands a school’s interest in preventing fights; however, even in a school setting, a student has a right to self-defense. In this case, where the Student has proven that her actions were justified, she cannot be guilty of a code of conduct violation.

This Board will not substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board “grossly abused its discretion or acted arbitrarily or contrary to law.” *S.G.*, 301 Ga. at 798, 804 S.E.2d at 432. An abuse of discretion occurs “if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence.” *Id.* In this case, the Local Board was concerned only with the fact that the Student was fighting. It failed to properly apply the relevant law to the evidence regarding the Student’s self-defense claim. As a result, the Local Board’s decision was contrary to the law. Thus, the Local Board’s decision cannot stand.

V. CONCLUSION

For the foregoing reasons, the decision of the Local Board is **REVERSED**.

This 22nd day of August, 2019.

A handwritten signature in blue ink, reading "Lisa Kinmore", is written over a horizontal line.

LISA KINMORE
VICE CHAIR FOR APPEALS