

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>M. C.,</b>	:	
	:	
<b>Appellant,</b>	:	<b>CASE NO. 2010-57</b>
	:	
<b>vs.</b>	:	
	:	
<b>HOUSTON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by M. C. (Student) from a decision by the Houston County Board of Education (Local Board) to uphold the decision of a student disciplinary tribunal to expel him from regular school until the end of the second semester of the 2009-2010 school year, with the option of attending alternative school during the period of expulsion, after finding him guilty of refusing to follow staff directions, fighting, and conduct subversive to the good order and discipline of the school. The Student claims that he was acting in self-defense; there was no evidence that he violated any rules, and the punishment was too severe for the circumstances. The Local Board’s decision is sustained.

On December 4, 2009, some students from another school came into the Student’s school and began looking for a friend of the Student. The Student began escorting his friend to the main office when the other students accosted his friend and began beating him. The Student began pulling the other students off his friend before teachers arrived on the scene. The Student and his friend were taken to the main office. The Student’s friend left the office and the Student followed him to get him back into the office. The two returned to the office without incident. The Student was charged with fighting, refusing to follow staff directions, and conduct subversive to the good order and discipline of the school.

At the disciplinary tribunal hearing on the charges, an assistant principal and a resource officer testified on behalf of the school system. The Student testified on his own behalf. At the conclusion of the hearing, the tribunal expelled the Student from regular classes until the end of the 2009-2010 school year with the option of attending an alternative school during his expulsion period. The Local Board upheld the tribunal’s decision when the Student appealed. The Student then appealed to the State Board of Education.

On appeal, the Student claims that there was no evidence presented to support any of the charges. He also claims that his actions constituted self-defense and that the punishment is arbitrary and unreasonable.

"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). A local board of education, however, has the burden of proof to establish that a student has violated one of its policies. *See, e.g., L. S. v. Carrollton City Bd. of Educ.*, Case No. 2007-58 (Ga. SBE, Oct. 11, 2007). In the instant case, an assistant principal testified that a video of the incident showed the Student hitting the invading students. The tribunal could, therefore, find that the Student engaged in fighting and conduct that was subversive to the good order and discipline of the school, notwithstanding the Student's testimony that he was merely trying to pull the attackers off his friend.

There was no evidence that the Student disobeyed any instructions from a teacher. The school system did not call any teacher to testify that the Student refused to follow any directions.<sup>1</sup> The assistant principal testified that the Student refused to remain in the main office when told to stay there, but the assistant principal's testimony was hearsay evidence. "In this state even in the absence of objection, hearsay is without probative value to establish any fact." (Citations and punctuation omitted.) *Williams v. Piggly Wiggly Southern*, 209 Ga. App. 490 (490 S.E.2d 676)(1993). We have held this to be the rule even in administrative hearings. *Finch v. Caldwell*, 155 Ga. App. 813, 815 (273 S.E.2d 216)(1980)." *McGahee v. Yamaha Motor Mfg. Corp.*, 214 Ga. App. 473, 474, 448 S.E.2d 249 (1994). There was, therefore, no basis for deciding that the Student refused to follow the directions of a teacher.

The Student also claims that the punishment was too harsh because of the circumstances. The State Board of Education, however, cannot adjust the level or degree of discipline imposed by a local board of education. *B. K. v. Bartow Cnty. Bd. of Educ.*, Case No. 1998-33 (Ga. SBE, Sep. 10, 1998).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was some evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of May 2010.

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William Bradley Bryant  
Vice Chairman for Appeals

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<sup>1</sup> Even the hearsay statements from the teachers that were allowed into evidence do not show that the Student refused to follow any directions given to him.