STATE BOARD OF EDUCATION
STATE OF GEORGIA

S.C.,	:	
	:	
Appellant,	:	
	:	**CASE NO.: 2022-31**
v.	:	
	:	**DECISION**
ROCKDALE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by S.C. ("Student") from the decision of the Rockdale County Board of Education ("Local Board") to suspend her from school for the remainder of the 2021-2022 school year with the option to apply to alternative school for violating Rule 1.14 (Disruption and Interference with School) of the Student Discipline Code of Conduct ("Code of Conduct"). For the following reasons, the decision of the Local Board is hereby **REMANDED WITH INSTRUCTIONS.**

I. FACTUAL BACKGROUND

During the 2021-2022 school year, the Student was a freshman at Salem High School. On March 15, 2022, the Student and her friends, Student 2, Student 3, and Student 4, remained after school to rehearse for a school play. Student 5 was also at rehearsal. Student 5 told the Student and Student 2 that Student 5's friend, Student 6, felt that the Student and another girl wanted to fight her. The Student denied that she wanted to fight Student 6. Thereafter, Student 5 began yelling at the Student and Student 2. The Student walked away. Student 5 began chasing her. The Student said to Student 5, "Little boy, get away from me." Student 5 told the Student to say "little boy" again. The Student responded by telling Student 5 to leave her alone. Student 5 motioned to hit the Student, at which time Student 2 warned Student 5 not to do so. The Student reported Student 5 to a teacher, Mr. Roper. Mr. Roper did not stop Student 5 from trying to attack the Student. Instead, Mr. Roper ejected all of them from the auditorium. Another staff member intervened to get Student 5 away from the Student. The Student, Student 2, and Student 3 called their parents to pick them up. Student 2 and Student 3 are sisters. Their father arrived at school, and after hearing about what had transpired, he asked Mr. Roper to handle the situation. Mr. Roper responded that these things would work themselves out.

On the next morning at school, the Student and some of her female friends were gathered at a table in the cafeteria before the start of classes. Student 5 was at the other end of the table. Student 5 approached the girls and told the Student to use Student 5's preferred gender. The Student told Student 5 to go away. Student 5 began swinging an umbrella at the girls and then threw a drink at them. The Student hit Student 5 after Student 5 struck her with the umbrella. Several other girls began hitting Student 5. A fight involving the group ensued. School staff members ultimately separated the students.

II. PROCEDURAL HISTORY

The Student was charged with violating Rule 1.14 (Disruption and Interference with School) of the Code of Conduct. She was suspended from school for ten days. Moreover, the principal referred the matter for a disciplinary hearing and recommended a long-term suspension. The hearing took place on March 30, 2022 before a Student Disciplinary Hearing Committee ("Tribunal"). A hearing officer presided over the proceeding. The Tribunal found the Student in violation of Rule 1.14 (Disruption and Interference with School). It recommended that the Student be suspended from school for the remainder of the 2021-2022 school year with the option to apply to the Alpha Academy at the EPIC Center, an alternative education program. Additionally, prior to re-enrolling at Salem High School, the Student and her parent must have a conference with the principal to discuss behavioral expectations.

The Student engaged counsel for her appeal to the Local Board. The attorney requested and received an extension of time to file a brief in support of the Student's appeal. Thereafter, at its May 2, 2022 meeting, the Local Board affirmed the Tribunal's recommendation. The Student requested that the Local Board rescind its decision because the Student did not receive notice of the Board meeting relative to the Student's appeal. The Local Board rescinded its decision. At a subsequent meeting on May 12, 2022, the Local Board again affirmed the Tribunal's decision. The Student timely appealed to the State Board of Education ("State Board").

III. STANDARD OF REVIEW

"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." *Roderick J. v. Hart Cnty. Bd. of Educ*., Case No. 1991-14 (Ga. SBE, Aug. 1991). *See also*, *Ransum v. Chattooga Cnty. Bd. of Educ*., 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene Cnty. Bd. of Educ*., Case No. 1976-11 (Ga. SBE, Sept.1976). An abuse of discretion occurs "'if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence.'" *Henry Cnty. Bd. of Educ. v. S.G*., 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017).

IV. ISSUES ON APPEAL

A. Was the Student Deprived of Due Process?

1. Did the Local Board's Decision Violate Its Code of Conduct?

The Student argues that her due process rights were violated because Rule 1.14 (Disruption and Interference with School) only gives notice of a maximum suspension of 10 days, whereas, the Local Board imposed a long-term suspension.

> Rule 1.14 provides:
> A student shall not plan, encourage others, or participate in a physical altercation that causes or contributes to the disruption or interference of the school environment or operations. Examples of prohibited conduct includes but is not limited to planning or encouraging other students to participate in a group fight or

disturbance (three or more individuals), participating in a group fight or disturbance, or engaging in conduct that disrupts the school environment or operations.

Maximum Recommended Disposition:
Automatic/Immediate 10-day suspension. Mandatory referral to Student Disciplinary Hearing. May refer to law enforcement.

Based on a plain reading of Rule 1.14, the State Board finds that the rule provides notice that the maximum recommended disposition includes an automatic or immediate 10-day suspension and a mandatory referral for a disciplinary hearing. A 10-day suspension does not require a disciplinary hearing. The principal referred the matter for a disciplinary hearing because she recommended a long-term suspension. *See* O.C.G.A. § 20-2-753(a) ("local boards of education shall appoint a disciplinary hearing officer, panel, or tribunal of school officials to hold a disciplinary hearing following any instance of an alleged violation of the student code of conduct where the principal recommends a suspension or expulsion of longer than ten school days."). Further, by letter of March 23, 2022, the Student and her parent were notified of the disciplinary hearing and were specifically notified that the Student may be expelled for an extended period of time beyond the current semester or permanently expelled.

The Student further argues that the maximum suspension under Rule 1.14 is 10 days. For the reasons stated above, 10 days is not the maximum suspension under Rule 1.14. The 10-day suspension and the mandatory referral for a school disciplinary hearing are two separate and distinct dispositions; they are not mutually exclusive.

Rule 1.14 (Disruption and Interference with School) notified the Student of the automatic or immediate 10-day suspension and the mandatory referral for a student disciplinary hearing. The Student was notified of the disciplinary hearing and the possibility that she may be expelled from school. The State Board finds that the Local Board did not violate its own policy and further finds the Student's due process rights were not violated. The Student's argument lacks merit.

2. Did the Local Board Fail to Give the Student Sufficient Notice of the Code of Conduct and its Amendment?

The Student argues that she did not receive a copy of the Code of Conduct at the beginning of the 2021-2022 school year or Rule 1.14 (Disruption and Interference with School), which was an amendment to the Code of Conduct that was implemented during the middle of the school year.

O.C.G.A. § 20-2-736 provides:

(a) At the beginning of each school year, local boards of education shall provide for the distribution of student codes of conduct developed pursuant to Code Section 20-2-735 to each student upon enrollment. Local boards of education shall provide for the distribution of such student codes of conduct to the parents or guardians of each student through such means as may best accomplish such distribution at the local level and are appropriate in light of the grade level of the student, including distribution of student codes of conduct to students and

> parents or guardians jointly. Local boards of education shall solicit or require the signatures or confirmation of receipt of students and parents or guardians in acknowledgment of the receipt of such student codes of conduct. A signature or confirmation of receipt may be obtained in writing, via electronic mail or facsimile, or by any other electronic or other means as designated by the local board. A parent or legal guardian that does not acknowledge receipt of the student code of conduct shall not be absolved of any responsibility with respect to the information contained in the student code of conduct. In addition, student codes of conduct shall be available in each school and classroom.

The Student's assertion that she did not receive a copy of the Code of Conduct at the beginning of 2021-2022 school year is not supported by the record. At the disciplinary hearing, the Student's mother identified the written acknowledgement of the receipt of the 2021-2022 Code of Conduct that the Student and she completed on October 20, 2021. The acknowledgment form was admitted into evidence without objection.

Rule 1.14 was implemented during the Christmas break. The Student contends that she did not receive notice of the rule. The Local Board argues that it took reasonable steps to notify all families about Rule 1.14, including sending automated voice messages to each telephone number of record, requiring all teachers to review school behavior expectations, including Rule 1.14, in their classrooms, broadcasting Rule 1.14 during morning announcements, and publicizing the new rule through the school's automatic message service. Assistant principal, Dr. Renee Robinson, testified that the aforementioned methods of notification were implemented at the school, and additionally the rules were on the school's website.

The Student counters that despite the fact that the Local Board claims to have notified families of Rule 1.14 in several ways, she did not receive the notice. In the case of direct messages from the school, the Student's mother testified that her contact information in the school records was incorrect, despite having provided the school with her updated information. Moreover, the Student testified that she did not hear the school announcements regarding Rule 1.14, nor did her teachers review the rule in class. The Student also asserts that the Code of Conduct, including Rule 1.14 was not available in the classroom.

Insofar as the conflicting evidence regarding notice to the Student about Rule 1.14 is concerned, "[i]t is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 1996). Thus, the resolution as to the conflict in the evidence rests with the Tribunal, and not the State Board.

O.C.G.A. § 20-2-736(a) provides that "[a] parent or legal guardian that does not acknowledge receipt of the student code of conduct shall not be absolved of any responsibility with respect to the information contained in the student code of conduct." Moreover, notwithstanding whether the Student was aware of Rule 1.14 at the time of the incident with Student 5, she testified that she knew that fighting, including group fighting, was not okay.

There is evidence in the record that the Student was notified of Rule 1.14. Consequently, the State Board finds that the Student's argument lacks merit.

3. **<u>Did the Hearing Officer Improperly Admit a School Video over the Student's Objection</u>?**

Prior to the disciplinary hearing, the Student's mother requested and was given the opportunity to view the video of the fight with Student 5. At the disciplinary hearing, the school played a video of the fight as part of its case-in-chief. The Student's mother stated that the video that was played at the hearing was not the same video that she had seen, or she had only been shown an abbreviated version of the video. The school's representative, who did not preview the video with the Student's mother, stated that there was only one school surveillance video, and that was the one that was presented at the hearing.

The Student asserts that when the video was presented at the hearing, she immediately objected on the basis that the video had not been produced during discovery. It was within the hearing officer's discretion to admit the video into evidence. The State Board finds no abuse of discretion, and thus, no due process violation. *See Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017).

Moreover, "Georgia law does not require any discovery process for student disciplinary procedures." *L.P. v. Oconee Cnty. Bd. of Educ.,* Case No. 2009-59 (Ga. SBE, Sept. 2009). The Student has not argued that she subpoenaed documents that were not produced, and therefore, there was no requirement that the school produce any documents. Further, the school is not required to produce exculpatory evidence. *See M.T. v. Crisp Cnty. Bd. of Educ.*, Case No. 2011-29 (Ga. SBE, Feb. 2011); *L.W. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2000-03 (Ga. SBE, May 2000); *A.A. v. Rockdale Cnty. Bd. of Educ.*, Case No. 2006-56 (Ga. SBE, May 2006).

The State Board finds that the admission of the videotape into evidence was within the hearing officer's discretion. The record does not support a finding that the hearing officer abused his discretion. The Student's claim is without merit.

4. **<u>Was the Testimony of the School's Representative Improper</u>?**

Dr. Robinson presented the case on behalf of the school district. The Student asserts that her due process rights were violated because Dr. Robinson was not placed under oath, sequestered, or subjected to cross-examination. The Student's claims fail for the following reasons.

First, the record clearly reflects that Dr. Robinson was placed under oath. At the start of the disciplinary hearing, the witnesses were sworn en masse. Thereafter, the hearing officer stated, "Let the record reflect that . . . and Renee Robinson all have affirmed."

Second, "[t]he rule of sequestration does not apply to a party." *Barnes v. Meriwether Cnty. Bd. of Educ.*, Case No. 2006-24 (Ga. SBE, Dec. 2005). *See also*, *D.C.A. v. State*, 135 Ga. App. 234, 217 S.E.2d 470 (1975). "Georgia law allows an employee to be designated as a representative for a party that is not a natural person." *B.B. v. Polk Cnty. Bd. of Educ.*, Case No, 2016-29 (Ga. SBE, June 2016). *See* O.C.G.A. § 24-6-615(2). In the present case, Dr. Robinson, represented the

school at the disciplinary hearing, and, therefore, she was not required to be sequestered since she was the prosecuting party. Additionally, the Student did not object to Dr. Robinson prosecuting the case and providing testimony. Thus, this Board concludes that the Student's failure to object at the hearing constitutes a waiver as to this issue.

Third, as Dr. Robinson presented the school's case, there were occasions wherein she interjected commentary pertaining to the evidence that she was presenting. To the extent that they disagreed with or had questions about Dr. Robinson's statements, the Student's mother and aunt directed questions to Dr. Robinson or made commentary that contradicted Dr. Robinson's statements. The Student did not object to the manner in which Dr. Robinson presented her testimony or complain that she was denied the opportunity to further cross-examine Dr. Robinson. Accordingly, the State Board finds that the Student's argument lacks merit.

5. Did the Hearing Officer Deprive the Student of the Opportunity to Fully Examine or Cross-Examine Witnesses?

The Student alleges that the hearing officer prematurely ended her direct and cross-examination of witnesses. The record does not support the Student's allegations. Further, to the extent that the Student believed that her direct or cross-examination was improperly limited by the hearing officer, she should have raised an objection so that the matter could have been addressed accordingly. *See L.G. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2003-49 (Ga. SBE, Sept. 2003).

6. Was the Hearing Officer Biased Against the Student?

The Student asserts that the hearing officer was biased because he unnecessarily asked questions of the witnesses and appeared to serve as a co-presenter for the school district. The Student relies upon *C.E. v. Newton Cnty. Bd. of Educ.*, Case No. 2014-14 (Ga. SBE, Jan. 2014) to support her argument. In *C.E.*, the State Board identified multiple instances in which the hearing officers engaged in improper conduct to the extent that the State Board found that they exhibited bias against the student, and thus, violated the student's due process rights.

Due process rights are not violated absent a showing of actual bias. *Tommy Adcock v. Dodge Cnty. Bd. of Educ.*, Case No. 2011-59 (Ga. SBE, July 2011), citing *Holley v. Seminole Cnty. Sch. Dist.,* 755 F.2d 1492, 1497 (11th Cir. 1985); *Diane Evans v. Jefferson Cnty. Bd. of Educ.*, Case No. 2010-01 (Ga. SBE, Oct. 2009); *Ashley Bates v. Clayton Cnty. Bd. of Educ.*, Case No. 2020-16 (Ga. SBE, Feb. 2020). In the instant case, the Student not shown actual bias on the part of the hearing officer, nor does the State Board find evidence of actual bias in the record. Accordingly, the State Board finds that the Student's claim of bias is without merit.

B. Was the Student Acting in Self-Defense?

The Student contends that she did not violate Rule 1.14 (Disruption and Interference with School) because she was acting in self-defense. The Local Board counters that the Student did not establish a reasonable belief that such threat or force was necessary to defend herself, that she was an aggressor, and that she provoked the fight.

Self-defense is available as an affirmative defense to charges in a school disciplinary hearing. *See A.H. v. Liberty Cnty. Bd. of Educ*., Case No. 2019-39 (Ga. SBE, Aug. 2019); *K.B. v. Henry Cnty. Bd. of Educ.*, Case No. 2014-43 (Ga. SBE, June 2014); *Q.W. v. Henry Cnty. Bd. of Educ.*, Case No. 2013-64 (Ga. SBE, Aug. 2013). 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). Moreover, a student is not required to retreat when she reasonably believes that she is in imminent risk of harm. *Id*.

In the instant case, the Tribunal found the Student guilty of Rule 1.14 (Disruption and Interference with School). The Tribunal did not address the Student's claim that she acted in self-defense. Likewise, in affirming the Tribunal's decision, the Local Board made no findings pertaining to the Student's self-defense claim. Consequently, the State Board finds that the Local Board did not apply the proper law to the evidence as to the Student's self-defense claim and reach its own findings in accordance with *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 804 S.E.2d 427 (2017).

C. Was the Student's Punishment Contrary to the Local Board's Progressive Discipline Process?

The Student argues that the Local Board did not consider any type of progressive discipline, but instead imposed punishment that exceeded the maximum penalty that was authorized by the Code of Conduct.

Because this appeal is remanded to the Local Board for further consideration as it relates to the Student's self-defense claim, the issue of punishment is not ripe for review.

V. CONCLUSION

The Student was charged with violating Rule 1.14 (Disruption and Interference with School) of the Code of Conduct. The Student contends that her actions were justified as self-defense. It is well-settled that self-defense is available as an affirmative defense to charges in a school disciplinary hearing. *See A.H. v. Liberty Cnty. Bd. of Educ*., Case No. 2019-39 (Ga. SBE, Aug. 2019); *K.B. v. Henry Cnty. Bd. of Educ.*, Case No. 2014-43 (Ga. SBE, June 2014); *Q.W. v. Henry Cnty. Bd. of Educ.*, Case No. 2013-64 (Ga. SBE, Aug. 2013).

The State Board finds that the Local Board did not apply the proper law to the evidence as to the Student's self-defense claim and reach its own findings. Consequently, the State Board remands this case to the Local Board with instructions to make further findings and conclusions as to the Student's self-defense claim after applying the appropriate law to the evidence in accordance with *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 804 S.E.2d 427 (2017).

For the foregoing reasons, the State Board **REMANDS** the decision of the Local Board **WITH INSTRUCTIONS**.

This 29th day of September, 2022.

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LEONTE BENTON
VICE CHAIR FOR APPEALS