RECENT COURT DECISIONS IN EDUCATIONAL DISCIPLINE

NAHO 2021

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Recent Court Decisions in Educational Discipline

- Court cases significantly change the way school discipline is conducted across the nation. These decisions have a substantial impact on school law. This experienced panel will present a discussion of recent case law developments in student disciplinary hearings, highlighting new challenges in this continually developing area of administrative law.

- These are their stories…

Hearing Officer Training

- (Georgia) State Board Rule 160-4-8-.15 (2)(j)) states, “Each local board of education shall make available to all Qualified Student Discipline Officers and Disciplinary Tribunal or Panel Members the initial and ongoing tribunal training course prior to the individual(s) serving in such capacity.”
- (Georgia) State Board Rule 160-4-8-.15 (1) (g) outlines the qualifications for a student discipline hearing officer and acceptable qualifications provided in the definition include, “an individual selected by the local system who… has experience as a teacher, counselor, or administrator in a public school system…”

Hearing Officer Training

(Georgia) State Board Rule requires a course of at least five (5) hours duration which includes instruction on:

1) All student disciplinary provisions in Title 20 of the Official Code of Georgia Annotated;
2) Due process requirements under federal and state law;
3) Applicable rules of evidence;
4) Leading federal and state judicial and administrative decisions; and
5) Applicable ethical standards and the role of the hearing officer and panel member as an independent, neutral arbiter.

Case 1: Due Process

Heyne v. Metropolian Nashville Board of Public Education, 380 S.W.3d 715 (Tenn. 2012)

- *Holding in a school disciplinary proceeding that a school official's dual role of prosecutor and decision-maker did not without more rise to the level of a violation of due process.*

Case 2: Jurisdiction and Social Media

Major v. The State of Georgia, Georgia Supreme Court, S17A0086, May 15, 2017

- *Georgia Supreme Court has upheld a school system's authority to charge/expel a student making a terroristic threat on social media.*

Case 3: Jurisdiction and Social Media

Mahanoy Area School District v. B.L., United States Supreme Court, June 23, 2021

- *USC ruled that profanity on social media away from school that **does not contain** threat or bullying, even though directed at students and school staff, is not within the school district's jurisdiction.*

Case 4: FERPA

FERPA, 20 U.S.C. § 1232g; 34 CFR Part 99

- *School districts may use bus videos, phone videos, and related media in hearings without faces being redacted provided parents and their attorney are not provided copies of the videos unless faces of by-standers are redacted.*

Case 5: Search & Seizure

New Jersey v. T.L.O. 469US325(1985)

- *USC ruled that teachers and administrators are under the standard of reasonable suspicion; and therefore, a warrant nor probable cause is necessary for a school administrator to search a student.*

Case 6: Off – Campus Jurisdiction

Gwinnett County Board of Education v. V.L.,

Gwinnett County Superior Court, 20-A-05561-7, February 24, 2021

Case 6: Off – Campus Jurisdiction

Facts

Date: September 25, 2019
Setting: School bus stop and neighborhood where both students reside
Student 1: V.L., 8th grade student
Student 2: C.P., 7th grade student

Timeline

V.L. and C.P. exited their school bus and engaged in verbal altercation.

Two students proceeded towards home but slightly separated in step. Then, V.L called C.P. to come back to him and slapped C.P.'s books out of his hands to the ground. Then, C.P. told V.L. he was going to fight him.

Both students continued to argue while walking towards home. C.P. walked behind V.L. threatening to fight him until V.L. reached his home.

V.L. went into his home and retrieved a Glock 19, 9 millimeter handgun, owned by his older brother.

Case 6: Off – Campus Jurisdiction

Facts

Date: September 25, 2019
Setting: School bus stop and neighborhood where both students reside
Student 1: V.L., 8th grade student
Student 2: C.P., 7th grade student

Timeline, continued

C.P. never entered V.L.'s home. C.P. remained outside in the middle of the street and began to collect his books from the ground.

V.L. exited his home and approached C.P. near the edge of his home. V.L. pulled a handgun from his sweatshirt pocket, He cocked it and pointed it at C.P.

V.L. placed the handgun on his knee and asked C.P. , "What's up now? C.P. was frightened and ran from the scene.

Case 6: Off – Campus Jurisdiction

Jurisdiction Defined by Gwinnett County Board of Education

The GCBE's Student Conduct Behavior Code includes the following:

Everyone is entitled to a safe, secure, and orderly environment in which to learn and work. The rules and regulations in this Code are designed toward that end and are effective during the following times and places:

a. On school grounds at any time

b. Off school grounds at a school bus stop, on a school bus, school activity, function, or event;

c. When either the alleged perpetrator or the alleged victim is en route to and/or from school, or to or from a school activity, function or event;

d. Off school grounds when the behavior of a student(1) could result in the student being criminally charged with a felony or which could result in a felony criminal charge if committed by an adult; and which (2) makes the student's continued presence at school a potential danger to person or property at school or which disrupts the educational process.(O.C.G.A. §20-2-751.5(c)).

d. Off school grounds while the student is participating in or attending school sponsored or school related activities such as field trips, conferences, or athletic events; or is otherwise subject to the jurisdiction of school authorities.

f. Off school grounds when the misconduct is directed at a school student or employee and is related to the victim's school affiliation, or when the off campus conduct directly affects the safety and welfare of the school community or the orderly mission and function of the school; and

g. Off school grounds and when a student leaves without permission(AWOL) of a school official or any time Rule 10 would apply.

Case 6: Off – Campus Jurisdiction

Decisions rendered:

V.L. admitted to violating Rule 6C (possession of a handgun)

V.L. admitted to violating Rule 1DC(disorderly conduct)

V.L was suspended until October 5, 2020 and recommended for permanent expulsion, with a chance to apply for readmission November 21, 2021.

V.L. Appealed to the Gwinnett County Board of Education

(The decision of the hearing officer was affirmed)

V.L. Appealed to the State Board of Education

(The decision of local school board was affirmed)

Case 6: Off – Campus Jurisdiction

Questions under consideration

(1) Did the local board have jurisdiction over off-campus behavior?

(1) Could V.L.'s behavior have resulted in a criminal felony charge? AND Would his presence pose a danger to persons at the school or a disruption to the learning environment?

Case 6: Off – Campus Jurisdiction

Answers from the Superior Court State of Georgia

A local board does not have general jurisdiction over off-campus behavior.

O.C.G.A §20-2-751(c) provides the only legal authority for a local board of education to exercise jurisdiction over the off campus behavior of a student.

This statute authorizes local boards of education to discipline students pursuant to policies prohibiting off campus behavior of students(1) which could result in the student being criminally charged with a felony, and(2) which makes the student's continued presence at school a danger to persons or property at the school or a disruption to the educational process.

Case 6: Off – Campus Jurisdiction

Decisions rendered:

V.L. Appealed to the Superior Court of Georgia

(The State Board of Education's decision was vacated and reversed)

Case 7: Self-Defense

Henry County Board of Education v. S.G. Georgia Supreme Court, S16G1700, August 28, 2017

- *Student charged with fighting must be given the opportunity to plead innocent by way of self-defense. Student bears responsibility to prove that they fought in self-defense.*

Case 8: Self-Defense

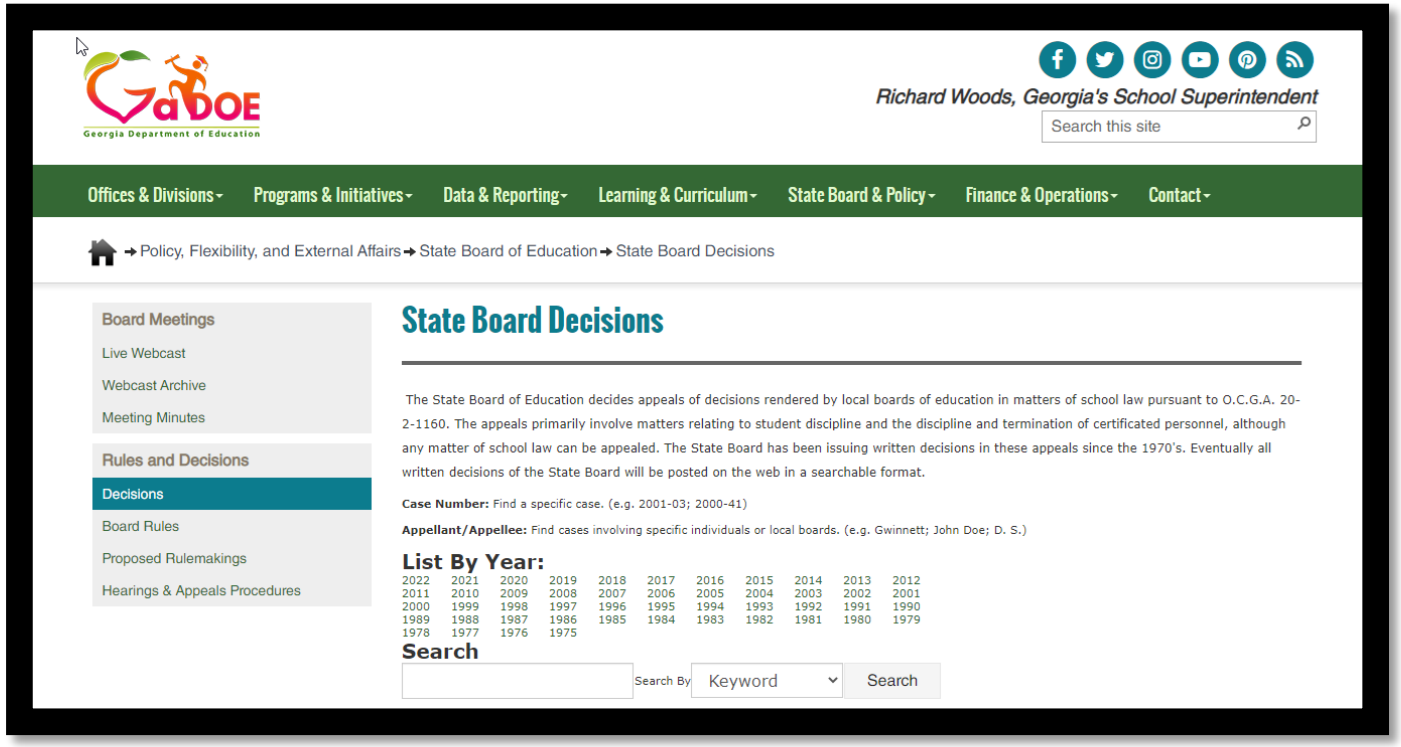
Gwinnett Board of Education v. P.S., Georgia State Board of Education, 2018-14, March 22, 2018

YOU DECIDE!

- In the school lunchroom, Student A and Student B engaged in a conversation regarding the whereabouts of Student B's cell phone.
- Student B accused Student A of taking the cell phone; Student A denied the accusation.
- Both Student A and Student B sat down at the lunch table, seated two chairs away from each other.
- After additional verbal comments from both students, Student B threw a grilled cheese sandwich at Student A's face.
- Student A then got up, walked over to Student B, stood over Student B for several seconds, and then repeatedly punched Student B in the head with both fists.
- Student B remained seated and did not strike back at Student A.
- Student A is claiming self-defense and referencing **Henry County Board of Education v. S.G. Georgia Supreme Court, S16G1700, August 28, 2017.**

Gwinnett County Self-Defense Statement

- *The Gwinnett County Board of Education recognizes that students have a right to defend themselves or others by threatening or using force against another when and to the extent that the student reasonably believes that such threat or force is necessary to defend the student or a third person against another's imminent use of unlawful force. I have carefully considered the claim of self-defense and based on the preponderance of evidence, I accept/reject your claim that you were justified in your actions. I do/do not find you in violation of rule _____.*



REVERSALS

Georgia State Board of Education decisions are available to the public.

Reversals

- Since 2017, decisions have trended strongly in favor of students at the State Board of Education (Georgia):
  - 2015: 29 student decisions; 1 Reversal = 3.44%
  - 2020: 29 student decisions; 13 cases were Reversed or Remanded = 44.82%
  - 2021: 5 student decisions; 2 Reversals = 40% *Covid year

~Information provided by Thompson, Sweeny, Kinsinger, & Pereira P.C.

Reversals

- Basis for Reversals
  - Self-Defense – Remand to determine if self-defense was considered.
  - Due Process
    - Charge letter fails to provide sufficient notice – Who, what, when, and where.
    - Charge letter not provided in advance.
  - Jurisdiction – Off-Campus Misconduct
  - Sufficiency of the Evidence
    - Drug Identification;
    - Student did not know what they possessed
      - No evidence that the student knew it was a drug, e.g., THC Edible
      - No evidence that the student knew it was a weapon, e.g., Pepper Spray
  - Specific Rule Provisions
    - Snap-n-Pops are not considered an “explosive compound”

~Information provided by Thompson, Sweeny, Kinsinger, & Pereira P.C

Challenges

- O.C.G.A. § 160-4-8-.15 (k)
- Each local board of education shall observe Georgia law in developing and implementing disciplinary hearings held by a disciplinary hearing officer, disciplinary panel, or disciplinary tribunal pursuant to O.C.G.A. § 20-2-751 through § 20-2-759 including the ability to honor disciplinary orders of private schools and other public schools/school systems pursuant to O.C.G.A. § 20-2-751.2.
- 1. Disciplinary hearings shall be held <u>no later than ten school days after the beginning of the student's suspension</u> unless the school system and parents or guardians mutually agree to an extension.
- 2. Any teacher who is called as a witness by the school system shall be given notice no later than three days prior to the hearing.

Challenges

- 10 Day Rule = Going in “blind”
- Hearings with Attorneys
- Hearing with DFACS
- Confidentiality
- Non-cooperative/ Irate Parents and/or Students
- Group Hearings
- In Loco Parentis
- Emotion vs. Evidence
- COVID safety protocol