

STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARGARET B. COOPER,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1979-6
	:	
GWINNETT COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

O R D E R

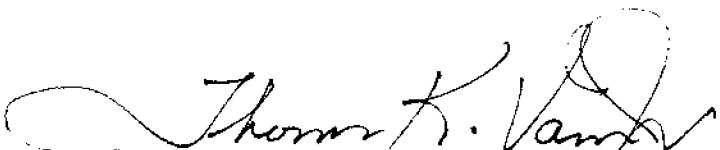
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Gwinnett County Board of Education herein appealed from is hereby affirmed.

Mrs. Oberdorfer was not present.

This 9th day of August, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

AUG 3 1979

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Appellant,	:	
	:	
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GWINNETT COUNTY BOARD OF	:	
EDUCATION,	:	REPORT OF
	:	
Appellee.	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

Margaret Cooper (hereinafter "Appellant") has appealed from the Gwinnett County Board of Education (hereinafter "Local Board") decision to terminate her services as a teacher on the grounds of insubordination, incompetency, and other good and sufficient causes. The appeal is based on alleged insufficiency of the evidence and procedural errors in the hearing notice given to Appellant and the conduct of the decision process. The Hearing Officer recommends that the decision of the Local Board be affirmed.

PART II  
FINDINGS OF FACT

Appellant received a written notice on February 27, 1979, which stated that the Superintendent would ask the Local Board to immediately terminate her services. The notice listed the charges, the witnesses, and the evidence to be presented if a hearing was held. Appellant was also advised that she could be represented by counsel at a hearing to be held on March 10, 1979.

Appellant was the teacher responsible for the greenhouse operated by the Local School System. She was charged with insubordination, incompetency and other good and sufficient causes as a result of discrepancies that occurred in her receipting of money she obtained from the sales of plants. She was also charged with failing to follow Local Board policies because she did not obtain prior approval before venturing on a fund-raising project and incurring expenses.

During the Fall of 1978, Appellant purchased poinsettias and sold them to other teachers, students, and to the public as a class project. A Local Board policy requires teachers to prepare a receipt for any money received in excess of \$.50. The teacher must then prepare a separate summary listing of all receipts obtained. The summary listing and the money are turned

over to the school bookkeeper who, in turn, gives a receipt to the teacher. All of these procedures were reviewed and emphasized by the principal during the year.

When the poinsettias were sold, Appellant received checks and cash. The evidence established that there were checks given to Appellant for the purchase price of poinsettias which Appellant listed on the summary sheet for a lesser amount than she actually received. The total amount of cash and checks she turned in agreed with the total shown on the summary sheet, but the discrepancy in the individual checks listed on the summary sheet was not discovered for some time. The bookkeeper for the School System apparently did not check the individual items listed on the summary sheet against the individual items received. Also, the summary sheet did not contain a recapitulation of the separate total amounts of the checks and the cash receipted.

When the discrepancies were discovered, an audit was made of the poinsetta sales. The auditor estimated there was approximately \$500.00 of unaccounted receipts. Appellant did not have any explanation for the estimated loss. She also did not offer any explanation of the differences between the amounts shown on the checks and the amounts she listed on the summary sheets for the checks.

The evidence also showed that there was a Local Board policy which required all fund-raising projects to be approved by the Local Board. Appellant was aware of the policy, but she nevertheless engaged in attempting to raise money by having her students sell fertilizer without first obtaining the approval of the Local Board. She also did not consult with or seek the approval of her principal. The principal became aware of the project when he was asked to sign a check to pay for the fertilizer that had been delivered to Appellant.

Appellant was aware of the procedures she was supposed to follow when she received any money. She was also aware that the Local Board policy required all fund-raising projects to be approved by the Local Board.

### PART III

#### CONCLUSIONS OF LAW

Appellant's appeal to the State Board of Education urges error on the part of the Local Board because the evidence was insufficient to support the charges, all of the money received was receipted, the notice of termination was contrary to law and insufficient, the decision of the Local Board was excessive, and the meeting of the Local Board was closed to Appellant when the decision was made. Considering first the sufficiency

of the notice of termination, Appellant argued that the notice was not personally served on Appellant, but, instead, was served on Appellant's counsel. The documents contained in the record show that on February 17, 1979, Appellant's counsel advised the Local Superintendent that he was representing Appellant and requested that the procedures of the Fair Dismissal Law (Ga. Code Ann. 32-3101c et seq.) be followed. The notice of termination, which listed the charges, the reasons, and the evidence to be presented, was thereafter delivered to Appellant's counsel on or about February 27, 1979.

Ga. Code Ann. §32-2101c(e) provides that ". . . the same rules governing nonjury trials in the superior court shall prevail." Ga. Code Ann. §81A-105 provides that service shall be made upon the attorney if a party is represented by an attorney. Additionally, Appellant did not raise any questions at the hearing before the Local Board concerning the sufficiency of the service. Since the issue was not raised at the hearing before the Local Board, it cannot now be raised for the first time on appeal to the State Board of Education. See, Hobby v. Tift County Bd. of Ed., Case No. 1977-6. The Hearing Officer, therefore, concludes that service on Appellant's counsel was sufficient because of the prior notice of employment given to the Local School System, and because the issue was not raised at the hearing before the Local Board.

The State Board of Education follows the rule that if there is any evidence to support the decision of the Local Board, the State Board of Education will not reverse the Local Board decision. Antone v. Greene County Bd. of Ed., Case No. 1976-11. The extent of any discipline rendered by a local board is within the discretion of the local board if there is any evidence to support the decision. There was evidence before the Local Board that Appellant did not follow the policies established by the Local Board even though she was aware of the policies. There was also evidence that considerable attention was given to informing all personnel about the procedures for the receipting of money and that Appellant did not follow the procedures.

The issue of whether all of the monies received by Appellant were receipted was not raised by the Local School System nor was it contained in the charges of insubordination, incompetency, and other good and sufficient causes. Even though all of the money received was receipted, Appellant did not follow the established procedures. As a result, it was not possible to determine how much money was received. The Local Board did not have to rely on any evidence of any shortages in order to make its decision.

The Hearing Officer concludes that there was evidence available to the Local Board to permit its decision. The Hearing Officer also concludes that evidence

concerning whether all monies received were receipted was not required and does not, therefore, establish a basis for appeal.

Appellant's final ground for appeal is that the Local Board met in closed session without Appellant's presence when it made its decision. Appellant, however, has not advanced any arguments, statutes, or case law to establish any requirement that a local board must open its deliberations to any of the parties. The Local Board has pointed out that the only requirement imposed on a local board is that a decision be made within five days. Ga. Code Ann. §32-2101c(f). It does not require any citation of authority to also point out that the deliberations of a jury, or of a judge sitting without a jury, are not required to be open to the parties. The Hearing Officer, therefore, concludes that the Local Board did not err in conducting its deliberations without Appellant's presence.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the arguments made by counsel, the Hearing Officer is of the opinion that there was evidence available which supports the decision of the Local Board, and that the Local Board did not commit any



error in arriving at its decision. The Hearing Officer, therefore, recommends that the decision of the Gwinnett County Board of Education to terminate Appellant be upheld.

*L. O. Buckland*  
L. O. BUCKLAND  
Hearing Officer