STATE BOARD OF EDUCATION

STATE OF GEORGIA

ORA BELLE KELSON, Appellant, v. THE BOARD OF PUBLIC EDUCATION FOR THE CITY OF SAVANNAH AND THE COUNTY OF CHATHAM, Appellee.	:	CASE NO. 1982-15

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 Board of Public Education for the City of Savannah and the County of Chatham herein appealed from is hereby sustained.

Mr. Vann and Mrs. Oberdorfer were not present.

This 11th day of November, 1982.

Hollis Q. Latham

HOLLIS Q. LATHEM
Acting Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ORA BELLE KELSON,	:	
	:	
Appellant,	:	CASE NO. 1982-15
	:	
v.	:	REPORT OF HEARING OFFICER
	:	
THE BOARD OF PUBLIC EDUCATION FOR THE CITY OF SAVANNAH AND THE COUNTY OF CHATHAM,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Ora Belle Kelson (hereinafter "Appellant") from a decision by The Board of Public Education for the City of Savannah and the County of Chatham (hereinafter "Local Board") to terminate her teaching contract on the grounds of insubordination for failing to follow established Local Board regulations. Appellant has appealed on the grounds the decision was arbitrary and capricious, her due process rights were violated, and because of procedural errors in the hearing. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

Appellant had been a teacher for six years. From October, 1981, until March, 1982, she was on a medical leave of absence

from her teaching duties. Upon her return, she was assigned to an elementary school different from the one where she was teaching before her medical leave.

On March 24, 1982, the Local Board adopted new policies regarding corporal punishment of students. One of the policies required a principal or another teacher to be present while corporal punishment was being administered. In addition, corporal punishment could only be administered to students "only by principals and/or teachers of the same gender as that of the student", and the "punishment must be administered in a place or places designated by the principal." The principal met with the teachers of the elementary school, including Appellant, and explained the new policies. He also designated his office as the only place where corporal punishment could be administered.

On April 21, 1982, Appellant had some problems with her class and she informed them that if they did not behave while she was absent from her room, she would spank them. The students were unruly during her absence and, immediately prior to the end of the class, Appellant spanked each of the eleven students who were in the class. During the incident, Appellant's aide was present in the room, Appellant was sitting down, and the children were laughing about the "paddling". One of the students, however, fell and struck her head against a desk during the incident and developed a headache. The

student later went to the principal and complained that she had a headache.

The principal questioned the student and learned what had happened. He called and questioned Appellant and learned about the incident from Appellant. Appellant admitted that she was aware of the policies adopted by the Local Board, but maintained that she could not find the principal when it was necessary to administer the punishment, and that she did not consider the punishment to be corporal punishment because she did not strike the students with any force. The paddling, instead, was a symbolic gesture to show her displeasure to the students.

On April 29, 1982, Appellant was sent a letter from the Local Superintendent which stated that he would recommend termination of her teaching contract to the Local Board on the grounds she had violated Local Board policy and procedure regarding corporal punishment, unprofessional behavior and conduct, insubordination, and loss of effectiveness and efficiency as a teacher. A hearing was set for May 12, 1982, and Appellant was suspended with pay effective April 29, 1982, until the hearing.

The hearing was held on May 12, 1982, before a tribunal of five persons who were involved in education. During the hearing, Appellant admitted that she was aware of the policies of the Local Board, and that she had administered the punishment

to the students. The tribunal issued its report on the same day and found that Appellant had violated Local Board policies and procedures; her conduct was unprofessional, and the violation was an act of insubordination. The tribunal found, however, that Appellant had not lost her effectiveness as a teacher and that she had the support of the parents. The tribunal recommended that Appellant be suspended without pay for the maximum length of time permitted by law, that she receive a letter of reprimand, and that she be reassigned to another school when she returned to work.

The Local Board met on May 26, 1982, and reviewed the record and the recommendation of the tribunal. Without making any findings of fact or stating any reasons why the recommendation of the tribunal was not being accepted, the Local Board voted to terminate Appellant's teaching contract. An appeal to the State Board of Education was filed on June 21, 1982.

PART III

CONCLUSIONS OF LAW

Appellant maintains that her due process rights were violated because neither the tribunal nor the Local Board made findings of fact in support of their decisions. In Hood v. Rice, 120 Ga. App. 691 (1969), the Court held that findings of fact and conclusions of law were not required of a local board of education because they were not required by

statute. The Local Board maintains that in the instant case, the statute does not require the Local Board to make findings of fact and conclusions of law so there has not been any violation of Appellant's due process rights. Appellant, however, maintains that Hood v. Rice was decided before the Fair Dismissal Act (Ga. Laws 1975, p. 360; Ga. Code Ann. Ch. 32-21c) was enacted. The Fair Dismissal Act states that "except as otherwise provided herein, the same rules governing nonjury trials in the superior court shall prevail." Ga. Code Ann. 32-2101c(e). Ga. Code Ann. 81A-152(a) states that "in all actions in superior court tried upon the facts without a jury ... the court shall find the facts specially and state separately its conclusions of law thereon ... " Appellant maintains that the later enactment of the Fair Dismissal Act and its reference to the nonjury rules of the superior courts now constitutes a statutory requirement for local boards of education to make findings of fact and state their conclusions of law. The holding in Hood v. Rice, that a local board of education does not need to make findings of fact is, therefore, inapplicable because a statute now requires such findings.

Since the adoption of the Fair Dismissal Act, the State Board of Education has followed the policy of Hood v. Rice and has not required local boards of education to make findings of fact and state their conclusions. The issue has also been raised with the Courts, see, e.g., Ransum v. Chattooga County

Bd. of Ed. , 144 Ga. App. 783 (1978), without the Courts overturning the position contained in Hood v. Rice. Even though findings of fact and conclusions of law would assist the reviewer of a case, the Hearing Officer, nevertheless, concludes that there is no present requirement for such findings and conclusions to be made by local boards of education.

Appellant's second basis for claiming error is that the evidence in the record does not establish that Appellant was insubordinate. This claim is made on the basis that insubordination requires a continuing refusal to obey a direct or implied order, and Appellant did not continually disobey the orders, regulations, and policies of the Local Board. Instead, Appellant asserts, she made an attempt to find the principal, but he was not present, she did not intend to disobey the directives of the Local Board, the discipline was "symbolic" rather than actual and did not constitute corporal punishment and was not intended to constitute corporal punishment, and she acknowledged that she had made a mistake in judgment. The Local Board, however, maintains that Appellant was aware of the policy and willfully disobeyed it. She did not make a concerted effort to find the principal because he was present in the building when the actual incident took place. In addition, the Local Board maintains that one of the children was injured as a result of the incident.

The record is clear in establishing that Appellant

willfully undertook to discipline the children in her own room outside the presence of the principal. In addition, she administered punishment to both boys and girls, which was also in violation of the Local Board's policies. Insubordination does not require sustained disobedience of a rule or regulation; a single incident which is willfully undertaken can constitute insubordination. In the instant case, Appellant's actions were done willfully and in disobedience to the policies of the Local Board. While Appellant's desires to "symbolically" discipline the children, her attempts to locate the principal, and her contriteness, may have been factors in mitigation, the Local Board was not required to consider them to be sufficient to permit Appellant to continue teaching, or the infraction to be of such insignificance that it would not be considered insubordination. The State Board follows the rule that if there is any evidence to support the decision of the Local Board, then the decision will not be disturbed unless there has been a gross abuse of discretion or some illegal action has been taken. In the instant case, there does not appear to have been an abuse of discretion. The Hearing Officer, therefore, concludes that there was sufficient evidence to show that Appellant was insubordinate.

Appellant also appealed the ruling of the tribunal hearing officer which excluded the opinion testimony of the parents concerning her effectiveness. Since the tribunal found that

Appellant had not lost her effectiveness, the ruling by the tribunal hearing officer, if in error, was harmless error and did not affect the decision of the tribunal, nor could it form a basis for the decision of the Local Board. The Hearing Officer, therefore, concludes that Appellant's claim is without foundation.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant was not denied any due process rights, the Local Board is not required to make findings of fact and state its conclusions, and that the tribunal hearing officer's rulings did not have any adverse impact upon Appellant. The Hearing Officer, therefore, recommends that the decision of the Local Board be upheld.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer