

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANN CALFEE, :
Appellant, :
v. : CASE NO. 1982-18
ATLANTA CITY 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,

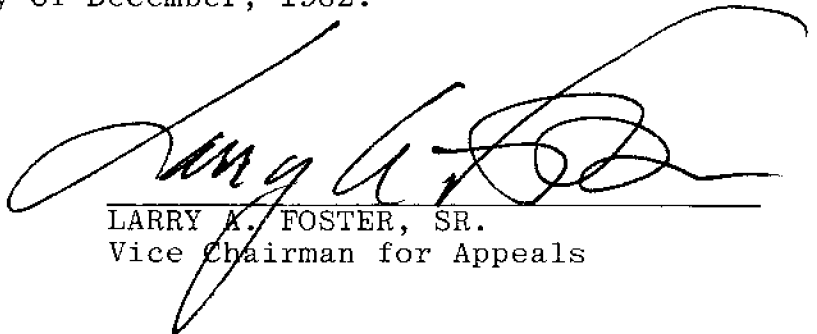
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that since the appeal herein was not filed with the local superintendent, the State Board of Education does not have jurisdiction, and the appeal is, therefore, dismissed.

THE STATE BOARD OF EDUCATION, nevertheless, has considered the merits of the appeal and has determined that if the appeal was not dismissed, the State Board of Education would affirm the decision of the local board.

Mr. McClung was not present.

This 9th day of December, 1982.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ANN CALFEE,	:	
	:	
Appellant,	:	CASE NO. 1982-18
	:	
vs.	:	
	:	REPORT OF HEARING OFFICER
ATLANTA BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Ann Calfee (hereinafter "Appellant") from a decision by the Atlanta Board of Education (hereinafter "Local Board") to dismiss her as a teacher on the grounds of insubordination and unprofessional conduct. The appeal is based upon Appellant's allegations that the hearing officer erred in admitting and in excluding evidence, the Local Board erred in not identifying specific acts or omissions that would justify suspension, and the evidence does not support the decision of the Local Board. The Hearing Officer recommends that the State Board of Education either dismiss the appeal or sustain the decision of the Local Board.

PART II
FINDINGS OF FACT

On January 29, 1980, Appellant was suspended by the Local Superintendent from her teaching duties on the grounds of incompetency and insubordination. Appellant was also notified that a recommendation would be made to the Local Board to terminate her teaching contract. A hearing was requested and scheduled on the charges, but Appellant asked for and received a postponement of the hearing. The Local Board and Appellant made efforts to resolve the issues without a hearing, but no progress was made. On October 24, 1980, Appellant wrote a letter to the Local Board and asked to be reinstated. The Local Board denied the request and Appellant was notified in writing of the denial on November 4, 1980. Appellant was unable to retain counsel until July, 1981. In September, 1981, Appellant again requested a hearing on the suspension and the recommendation of termination. The Local Board asked the Professional Practices Commission to appoint a tribunal to hear the matter and issue findings of fact and a recommendation. The hearing before the Professional Practices Commission tribunal was held on June 4, 1982.

During the hearing, Appellant made charges that several of the administrators and her co-workers were involved in a conspiracy against her. The Professional Practices Commission

tribunal found that Appellant claimed that the problems she had with her co-workers at her prior teaching assignment were the result of jealousy and because the members of her teaching team were "liars" and "gossips", but there was no evidence to sustain Appellant's fears and feelings. The tribunal also found that there was no evidence to sustain Appellant's fears and feelings that there was a conspiracy among supervisory personnel and her principal to keep her out of an administrative position, nor was there any evidence to sustain Appellant's charges that there was a conspiracy in the central office to drive her out of the system.

There was evidence presented that Appellant's charges against her aides were unfounded and that when Appellant's principal attempted to discuss matters with her, she became irrational and would not listen to any view different from her view. The tribunal also found there was evidence that Appellant placed blame on those around her and would not accept responsibility for any situation in which she was involved. Appellant also threatened her principal, when he did not agree with her, that there were ways of going above him.

Based upon the evidence presented, the Professional Practices Commission tribunal found that Appellant had exhibited irrational behavior, that she generated unnecessary conflict with

other staff members, and that her charges against other staff members were excessive, uncalled for, and unfounded. Based upon these findings, the tribunal concluded that Appellant's actions were both unprofessional and insubordinate. The tribunal then concluded that the evidence supported the following charges which had been made against Appellant:

1. Irrational behavior which created unnecessary conflict with other staff members;
2. Exhibiting unprofessional behavior and insubordinate conduct in making threats and accusations against superiors and co-workers;
3. Behavior and conduct which fostered unnecessary and disruptive conflicts, creating a poor learning environment at the school, and
4. Failure to remedy defects and deficiencies in job performance after numerous consulting efforts by the principal and area superintendent.

The Professional Practices Commission tribunal recommended (1) that the suspension by the Local Superintendent be sustained, and (2) termination of Appellant's teaching contract. The Local Board met on August 19, 1982, and voted to accept the findings of fact, conclusions, and recommendations of the hearing tribunal.

Appellant filed her appeal from the decision of the Local Board with the attorney for the Local Board on September 20, 1982.

The Local Board filed a motion to dismiss on the grounds the appeal was improperly filed because it was not filed with the Local Superintendent.

PART III

CONCLUSIONS OF LAW

The first issue to be decided in this case is whether the appeal was properly filed and whether the State Board of Education has jurisdiction. The Local Board maintains that the filing of the appeal with the attorney for the Local Board does not comply with the requirements of Ga. Code Ann. §32-910, which states:

"The appeal shall be filed with the superintendent within 30 days of the decision of the local board. . . ."

The Local Board argues that proper and timely filing of the notice of appeal is an absolute requirement for an appellate body to have jurisdiction to hear an appeal. The Local Board claims the appeal was not properly filed because the Local Board's attorney is not the Local Superintendent. Appellant, however, argues that Ga. Code Ann. §6-902 provides that when a party is represented by an attorney, service "shall be made upon the attorney unless service upon the party himself is ordered by the court." Appellant maintains that the Local Board

is both a party and the forum and received timely and proper notice of the appeal since the attorney who presented the case and who represents the Local Board received the appeal on a timely basis.

In order to file an appeal in an administrative or quasi-judicial proceeding, the requirements of the statutes permitting an appeal must be strictly followed in order to permit the appellate body to have jurisdiction to review the matter. Ga. Code Ann. §32-910 does not provide for an appeal to the State Board of Education to be filed with the attorney who represents the local board. Instead, it provides that the filing must be with the local superintendent. The fact that the attorney who represented the Local System at the hearing before the Professional Practices Commission tribunal also represents the Local Board is immaterial to the argument. Appellant's reliance on the provisions of Ga. Code Ann §6-906 is misplaced since this code section does not provide that a filing of a pleading is completed when service is made upon the attorney. The filing of a document and service of the document are separate and distinct actions required by law and the two actions cannot be juxtaposed and considered to be the same action. The Hearing Officer, therefore, concludes that the appeal in the instant case was improperly filed and that the State Board of Education, therefore, does not have jurisdiction to hear the appeal.

In her appeal, Appellant maintains that (1) the preponderance of the evidence did not support any finding that she committed any actions which would constitute a breach of her teaching contract; (2) the Local Board was without authority to suspend her for more than sixty days, and (3) the Local Board violated her due process rights by not giving her notice and a hearing on either her termination or the non-renewal of her contract for the following year.

Appellant argues that the Local Board erred by not stating any findings or identifying any acts which would justify her suspension or termination. She maintains that there was no showing that any specific rule or regulation was violated and she, therefore, had abided by the terms of her contract with the Local Board. She further maintains that only a material breach of her contract would justify her suspension or dismissal.

A local board of education, however, is not required to make specific findings of fact or conclusions of law in order to make a decision. In the instant case, nevertheless, the Professional Practices Commission tribunal did make findings of fact which were adopted by the Local Board. The Local Board, therefore, did not commit any error by not making specific findings of fact.

A teacher's contract with a local board of education includes the provisions of the Fair Dismissal Act, which provides that a teacher may be suspended or terminated for insubordination, incompetency, and for other reasons. Ga. Code Ann. §32-2101c. There was evidence before the Professional Practices Commission tribunal that Appellant was a disruptive force within the school, that she was making charges against her co-workers that were unfounded, and that she was threatening her superiors in order to obtain her own way. These actions were sufficient to enable the Professional Practices Commission tribunal to find that Appellant acted in an unprofessional manner and was insubordinate.

Appellant also argues that the Professional Practices Commission tribunal's findings contradicted its findings that there was insufficient evidence to support charges that her actions resulted in conflict within her classroom and that she had violated Local Board policies. The argument, however, overlooks the fact that a finding that a teacher can teach in the classroom does mean that the teacher's actions do not have an effect on the learning atmosphere within the school as a whole. Also, a finding that there has not been any specific rule or regulation violated does not negate a finding that a teacher's conduct can be considered unprofessional or insubordinate. In the instant case, Appellant made threats in order to

obtain an advantage in an argument, and her actions had an effect on the other teachers in the school that was disruptive. It is not necessary for the rules and regulations of a local board to specifically itemize each and every action that a teacher may take or may not take in order for there to be a finding that the teacher has been insubordinate or unprofessional. The Hearing Officer, therefore, concludes that there was evidence before the Professional Practices Commission tribunal which supported the decision of the Local Board.

Appellant also argues both that the Local Board could not suspend her for more than sixty days, and that it could not terminate her because she was not given notice of termination before April 15, 1980. The initial hearing was scheduled to be held on February 13, 1980, and was postponed at Appellant's request. The hearing was to be held for the purpose of both reviewing the suspension and to decide whether Appellant's contract would be terminated. Since the postponement was granted at Appellant's insistence, she cannot now turn it into an advantage by claiming that the Local Board was without power to suspend her for more than sixty days and that she was not given notice of termination. The argument overlooks the fact that Appellant was given notice that a recommendation of termination would be made at the hearing in the letter she received informing her of

the hearing. It also confuses two code sections in maintaining that the Local Board was without authority to suspend her for more than sixty days. Ga. Code Ann. §32-2104c does provide that a suspension by a local board will not be for more than sixty days, but the suspension involved in this case was made by the Local Superintendent under the provisions of Ga. Code Ann. §32-2101c(g). The Hearing Officer, therefore, concludes that Appellant is estopped from raising the postponement of the hearing at her insistence as a bar to the Local Board's actions and Appellant's arguments are without merit.

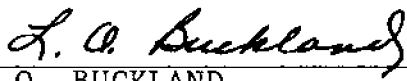
PART IV

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 the appeal was improperly filed and should, therefore, be dismissed. With respect to the merits of the appeal, the Hearing Officer is of the opinion that the evidence supported the decision of the Local Board, and Appellant is estopped to raise the delay in the hearing as a bar to any actions by the Local Board. The Hearing Officer, therefore, recommends that the appeal be dismissed, or, alternatively, if the State Board of Education should find that it

does have jurisdiction, the decision of the Local Board should be sustained.

Appearances: For Appellant - Mary S. Peterson; For Local Board - Smith, Cohen, Ringel, Kohler & Martin; Bruce H. Beerman, Allie Sue Edwards.



L. O. BUCKLAND
Hearing Officer