

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**SYLVIA ARNOLD,** :  
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 :  
 **Appellant,** :  
 : **CASE NO. 1990-1**  
 v. :  
 : **DECISION**  
 :  
 **ATLANTA BOARD** :  
 **OF EDUCATION,** :  
 :  
 :  
 **Appellee.** :

This is an appeal by Sylvia Arnold (“Appellant”) from an Atlanta Board of Education (“Local Board”) decision that: (1) denied her grievance appeal from a decision by the Local Superintendent that denied her any relief on her allegations that she had been the subject of harassment, discrimination, abuse, and intimidation by her supervisor; (2) ordered an investigation of her request for reimbursement to attend an educational meeting, and (3) denied her request to transfer her program to another department. Appellant claims that the Local Board denied her procedural due process by not following the grievance procedures established by the State Board of Education. In addition, Appellant claims that the grievance procedures adopted by the Local Board do not comply with the State Board of Education’s grievance procedures. The decision of the Local Board is reversed, and the Local Board is directed to provide Appellant with a grievance hearing that conforms to the policies established by the State Board of Education.

Appellant serves as the Coordinator of Safety for the Atlanta Schools, a certificated position. On September 1, 1988, the Local Board employed G. Harris as a new Assistant Superintendent, Facilities Services Division, the division in which Appellant’s program is located. On November 23, 1988, Appellant filed four grievances with her supervisors. In the first grievance, Appellant claimed that Mr. Harris had threatened, abused, intimidated, harassed, and discriminated against her; that Mr. Harris demanded that she “clock in” and “clock out” daily, a practice not required of certificated personnel; he opposed her attendance at staff meetings; he improperly deducted money from her paycheck, and he committed other irregularities. The other three grievances were against actions by other administrators in failing to process Appellant’s claims or in performing functions for Mr. Harris. No action was taken concerning Appellant’s grievances until January 17, 1989, when the Local Superintendent conducted a hearing. The Local Superintendent granted Appellant some relief, but directed that the bulk of the grievances should be presented to the employee assistance department. The Local Superintendent did not address any of Appellant’s complaints concerning Mr. Harris’ treatment of her. Appellant then appealed to the Local Board.

On May 17, 1989, the Local Board conducted a hearing. The Local Board refused to permit Appellant to introduce evidence and have witnesses testify on her behalf. The Local

Board directed an investigation concerning Appellant's loss of pay, but denied any relief concerning Appellant's claim of harassment by Mr. Harris, and denied Appellant's request to have her program transferred to another division. The Local Board issued its decision on May 19, 1989. On June 14, 1989, Appellant filed an appeal to the State Board of Education with the Local Superintendent and requested the Local Superintendent to forward a record to the State Board of Education.

The Local Superintendent failed to forward a record in spite of numerous requests from the Georgia Department of Education. Finally, on February 20, 1989, a record was submitted, after oral arguments were scheduled without a record. The record submitted consisted of a "recollected transcript" prepared by the Local Board's attorney on behalf of the Local Superintendent, a copy of one of Appellant's grievances, and some correspondence.

The State Board of Education adopted a policy, Policy GAE, "Complaints By Certified Personnel", that was effective on August 11, 1988. The policy requires local boards of education to establish a complaint policy. The local policy has to provide that a complaint will be resolved by the local board within 60 days; "the complainant shall be entitled to an opportunity to be heard, to present relevant evidence and to examine witnesses...", and accurate minutes have to be kept and evidence preserved. In addition, appeals from the local board's decisions are to be made to the State Board of Education.

The Local Board's grievance procedure provides:

1. "A grievance exists when an employee thinks he has not been treated in accordance with established rules, regulations, or policies....";
2. "An aggrieved employee has a right to present his grievance. . free from interference, restraint, discrimination, or reprisal."
3. A grievance will be decided by the Local Superintendent within 30 days after filing, and by the Local Board within 70 days after filing.

The Local Board's policy does not provide for the examination of witnesses, the maintenance of accurate minutes and the preservation of evidence, or a decision by the Local Board within 60 days, all of which are required by State Board Policy GAE. The Local Board failed to provide Appellant these procedures, i.e., it did not permit the examination of witnesses, accurate minutes were not kept, and the Local Board did not make a decision within 60 days.

Throughout the course of this proceeding, Appellant has been denied an opportunity to present her grievance, and has not received timely responses to her grievances and appeals. She was restricted in the presentation of documentary evidence and witnesses. Her appeal to the State Board of Education was never processed (or even acknowledged)

Regardless of the merits of Appellant's grievances, she is entitled, at a minimum, to receive the procedural rights established by the State Board of Education and supplemented by the Local Board's procedures. Instead, her grievances have been totally disregarded and she has been

forced to appeal to higher levels, her grievances have been partially addressed, and, ultimately, she has been treated as if she did not exist.

The Local Board argues that it does not have to follow any of the State Board of Education's policies, procedures, and regulations because of the decision in Dept. of Education v. Kitchens, 193 Ga. App. 229, 387 S.E.2d 579 (1989). Appellee argues that Kitchens is inapplicable, and further points to the passage of Act 1206, 1990 Ga. Laws, effective April 4, 1990, by the Georgia Legislature. Under this Act, all rules adopted by the State Board of Education prior to January 1, 1990, are ratified and validated, thus setting aside any effect of Kitchens in the instant case.

Regardless of the validity of the regulations of the State Board of Education as a result of the Kitchens decision, the Local Board violated its own grievance policies by not permitting Appellant to fully present her grievances. The Local Board's policies provide that a grievance exists when "an employee thinks he has not been treated in accordance with established rules ....", and an employee has a "right to present his grievance ... free from interference, ... [or] restraint ...". [Emphasis added]. The "record" does not show that all of Appellant's grievances were considered or dealt with, and she was prevented from presenting documentary evidence and witnesses to the Local Board. By not following its own procedures, the Local Board denied Appellant procedural due process. At a minimum, the Local Board must indicate that all of Appellant's grievances have been considered, and she must be given the opportunity to present her grievance free from interference or restraint. We also believe the grievance policy adopted by this Board is valid and controlling on the Local Board, which would require the Local Board to permit the examination and cross-examination of witnesses and the maintenance of a complete record, with preservation of the evidence, all within 60 days.

The Atlanta Board of Education's decision, therefore, is reversed.

This 14<sup>th</sup> day of June, 1990.

Larry A. Foster  
Vice Chairman for Appeals