

Osborne, a football coach and special education teacher at Cedar Shoals High School.

Mr. Worthy investigated Student A's grade in Foundations in Math II and determined that the teacher had erred in her roll book by counting the student absent when he was attending in-school suspension. Associate Principal Worthy obtained a verification from the Student's teacher and then obtained a grade change form from Appellant. After Appellant reviewed the verification, he signed the grade change form. The grade change form was also signed by Associate Principal Worthy and the principal, Mr. McLaughlin.

Mr. Worthy also discussed Student A's situation with Mr. Osborne. Mr. Osborne was aware that Student A had been deemed ineligible to play football on August 1, 1989, and he had discussed the matter with Principal McLaughlin. Mr. Osborne met with Student A and his father during the week of August 14, 1989. Mr. Osborne then took steps to have the Student enrolled in special education classes.

On August 28, 1989, Principal McLaughlin met with Mr. Hall, a former science teacher for Student A. The student had failed the science course during the previous year. Principal McLaughlin told Mr. Hall that he could not make Mr. Hall change the student's science grade, but "I think you need to do what's right for the kid." Mr. Hall decided to change the Student's grade and obtained a grade change form from Appellant.

Principal McLaughlin also talked with Mr. Boggs, the student's 1987-1988 World Geography teacher. The Student had not passed the World Geography course, and Mr. McLaughlin told Mr. Boggs that he needed to do what was right. Mr. Boggs told Mr. McLaughlin that he would change the Student's grade. Mr. McLaughlin directed Appellant to deliver a grade change form to Mr. Boggs. When Appellant delivered the grade change form, Mr. Boggs made the grade change and returned the form to Appellant.

Mr. Pearce was the Student's Construction I teacher during the 1988-1989 school year. The Student passed the course but did not get credit because of excessive absences. During pre-planning week, Mr. Osborne discussed Student A's situation with Mr. Pearce. Mr. Pearce investigated the matter and determined that he had erred in calculating the Student's grade. He obtained a grade change form, made the grade change, and took the grade change form to Appellant.

Appellant took the grade change forms presented by the three teachers to the principal. When he presented the forms, Appellant told Mr. McLaughlin that thought it was improper to change grades for a previous year. Principal McLaughlin directed Appellant to obtain a rationalization from the three teachers. Appellant obtained a written rationalization from each of the three teachers and presented them to Principal McLaughlin. Appellant once again told Principal McLaughlin that he thought it was improper to change prior year grades, and, when Principal McLaughlin asked Appellant to sign the grade change forms, Appellant refused. Principal McLaughlin did not press the issue, but signed the forms himself.

Appellant was directed to send the grade change forms to the central office administration. When Appellant asked the Cedar Shoals registrar to send the forms to the central

office, she refused. Subsequently, the change forms were mailed in the inter-office mail to the central office. The central office computer operator returned the change forms because only the year-end grades had been changed, and the computer would only accept grade changes for a quarter. Appellant was again directed to obtain the correct changes. He obtained the changes and the forms were submitted again and processed.

Student A was declared eligible to play football on August 30, 1989. On Friday night, September 1, 1989, he made two touchdowns.

Evidence was presented that the Local Board did not have a policy concerning grade changes. At Cedar Shoals High School, the practice was that teachers and the principal could submit grade change forms; the counselors could not make or initiate any grade changes. In previous years, grade changes were made by the principal or the central office despite teacher protests. As a result, there was a pervasive attitude that the central administration supported the principal. One teacher testified, "... the teacher is always going to lose. The principal is not going to lose." Appellant testified that he thought the grade changes were improper, but that he did not believe there was anything improper about his processing the paperwork involved.

At the conclusion of the hearing, the Local Board voted to uphold the Local Superintendent's recommendation to demote Appellant and additionally stipulated that Appellant would be ineligible for a position as a counselor for a period of two years. Appellant then filed a timely appeal with the State Board of Education.

PART III

DISCUSSION

Appellant maintains on appeal that the Local Board's decision is erroneous because "any other good and sufficient cause" standard is unconstitutionally vague as applied to the facts of this case, and that his demotion violates his rights of substantive due process. Appellant claims that there was not substantial evidence before the Local Board to permit the Local Board to reach its decision.

A local board of education has the burden of proving the charges made against a teacher. The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion, or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11.

The charge against Appellant was that he "participated in changing of grades for a student..." The Local Board, therefore, had to have evidence that Appellant participated to such an extent that his participation constituted "other good and sufficient cause" that would permit the Local Board to demote Appellant. The Local Board issued its decision without making any findings of fact. We, therefore, must search through the record to determine if there is any evidence to support the Local Board's decision. The Local Board maintains that a reading of the

transcript shows that Appellant participated in a “scheme” to gain eligibility for the Student to participate in extra curricular activities in the fall of 1989.

The Local Board points to the following factors to support its decision: (1) Appellant furnished grade change forms to the teachers who changed the Student’s grades; (2) Appellant personally hand-delivered one grade change form to the room of a teacher; (3) Appellant telephoned Mr. Osborne and asked him to pick up a grade-change rationale from Mr. Pearce; (4) Appellant gave the grade change forms to the guidance office secretary and asked her to change the grades on the Student’s permanent records, which she did when the principal signed the grade change forms; (5) Appellant asked the Cedar Shoals registrar to send the grade change forms to the central office, but she refused, and (6) another counselor told Appellant that Appellant was “being used”, but Appellant said that he was merely handling the paperwork.

A review of the evidence pointed to by the Local Board, and a review of the record, shows that Appellant was directed by the principal to deliver the grade change forms, to obtain the teacher signatures on the grade change forms, to obtain rationales for the grade changes from the teachers, and to submit the grade change forms to the central office. Each of the teachers who changed a grade decided to change the grade without first talking with Appellant. Appellant did not think the grade changes were proper because they were for a prior year, but the principal directed him to process them. Appellant, nevertheless, refused to sign the grade change forms.

The issue to be decided in this case is whether a teacher can be disciplined under the provisions of O.C.G.A. § 20-2-940 for “other good and sufficient cause” if the teacher obeys the directives of a superior while questioning the propriety of what is being accomplished. We conclude that the teacher cannot be disciplined for obeying the directives of a superior.

The Local Board attempted to equate Appellant’s actions with those of the defendants in the Nuremberg Trials following World War II. Such an equation is hardly apropos. Processing the paperwork to change the grade of a student, when the grade change has been approved by the principal and the student’s teacher, does not rise to the level of a crime against humanity such as was involved in the Nuremberg Trials.

In order to find that Appellant’s “participation” was such that it merited disciplinary action, the Local Board had to have evidence that Appellant was culpable. In order to be culpable, a teacher must be in a position to act without the authority of a superior. In the instant case, Appellant was not in a position to act without superior authority. The evidence shows that counselors did not have the authority to change grades; only teachers and the principal had the authority to change grades. Everything that Appellant undertook was at the direction of the principal. Appellant delivered forms, made telephone calls, picked up forms, and asked the registrar to send the forms to central administration, but Appellant performed these actions to carry out the orders of the principal. In the single instance where Appellant had the opportunity to assume responsibility, when he was asked to sign the grade change cards, Appellant refused.

The Local Board’s position apparently is that a teacher must, in the first instance, make a decision whether he or she is being asked to do something that may be a part of a situation that will later be determined to be improper. If the teacher decides that the situation may later be

determined to be improper, then the teacher must refuse and run the risk of being insubordinate, even though the teacher believes that there is nothing improper about the particular actions the teacher is told to perform. Thus, a teacher would have to question each and every directive of a principal or a superintendent and refuse to obey any directive that the teacher thinks is improper or is a part of something that will be considered to be improper, e.g., the teacher must refuse to deliver a piece of paper or pick up a piece of paper if the teacher thinks the paper relates to something that is improper. Without getting into a discussion of the entire area of teacher or professional ethics, we think the Local Board's position in this case places an intolerable burden upon teachers and could result in administrative chaos.

PART IV

DECISION

Based upon the foregoing, we are of the opinion that there was no evidence before the Local Board to permit it to demote Appellant for "other good and sufficient cause" under the provisions of O.C.G.A. § 20-2-940. The Local Board's decision, therefore, is

REVERSED.

This 13th day of September, 1990.

Mr. Foster and Mr. Lathem voted no. Mr. Owens was not present.

**JUANITA BARANCO
ACTING VICE CHAIRMAN FOR APPEALS**

