**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| **THELMA D. DILLARD,** | : | |
| | : | |
| **Appellant,** | : | |
| | : | **CASE NO. 1995-28** |
| **vs.** | : | |
| | : | |
| **BIBB COUNTY BOARD OF EDUCATION,** | : | |
| | : | |
| **Appellee.** | : | |
| | : | |
| **ELAINE LUCAS,** | : | |
| | : | |
| **Appellant,** | : | |
| | : | **CASE NO. 1995-29** |
| **vs.** | : | |
| | : | |
| **BIBB COUNTY BOARD OF EDUCATION,** | : | |
| | : | |
| **Appellee.** | : | |
| | : | |
| **HENRY C. FICKLIN,** | : | |
| | : | |
| **Appellant,** | : | |
| | : | **CASE NO. 1995-30** |
| **vs.** | : | |
| | : | **DECISION** |
| **BIBB COUNTY BOARD OF EDUCATION,** | : | |
| | : | |
| **Appellee.** | : | |

## PART I
## SUMMARY

The appeals of Thelma D. Dillard (sometimes referred to hereafter as ("Dillard"), Elaine Lucas ("Lucas"), and Henry C. Ficklin ("Ficklin") (collectively referred to hereafter as "Appellants") are before the State Board of Education upon remand from the Superior Court of Bibb County, which reversed the previous decisions entered by the State Board of Education in

the separate appeals filed by Appellants from decisions by the Bibb County Board of Education ("Local Board") that required them to repay amounts paid to them when they were attending to personal matters while claiming they were on sick leave. The State Board of Education previously ruled that the collection of improperly paid wages and salaries was an administrative matter that did not involve the interpretation of school law. See, Ficklin v. Bibb Cnty. Bd. of Educ., Case No. 1994-34 (Ga. SBE, June 9, 1994); Dillard v. Bibb Cnty. Bd. of Educ., Case No. 1994-38 (Ga. SBE, Aug. 11, 1994), and Lucas V. Bibb Cnty. Bd. of Educ., Case No. 1994-40 (Ga. SBE, Aug. 11, 1994). The Superior Court ruled that the Local Board had to rely upon an interpretation of school law to decide that Appellants needed to repay the amounts they were found to have been overpaid. The Superior Court directed the State Board of Education to consider whether the Local Board exceeded its authority in ordering repayment in the context of a hearing held under the provisions of O.C.G.A. § 20-2-940, whether there was a mutual departure from the terms of the employment contract, as defined in O.C.G.A. § 13-4-4 (Michie, 1982), and to consider all other enumerations of error previously raised by Appellants, including whether the statute of limitations bars the collection of the funds.

## PART II
## FACTUAL BACKGROUND

Appellants have each been employed for many years by the Local Board and each of them served on the City Council for the City of Macon. On March 4, 1994, the Local Superintendent notified Appellants that he would seek to have disciplinary measures imposed under the provisions of O.C.G.A. § 20-2-940 because they had made unauthorized use of their sick leave benefits. In addition, the Local Superintendent informed Appellants that he would seek reimbursement of the improperly paid benefits. The amounts the Local Superintendent sought to collect were $2,285.85 from Dillard, $634.38 from Lucas, and $1,914.95 from Ficklin.

The Local Board's Policy GBRH provides for several types of leave. The two types of leave relevant to these appeals are personal leave and sick leave. The Local Board's Policy provides that:

> Personal leave may be granted up to a maximum of three (3) days (24 hours) of earned sick leave for personal reasons within any one leave year....
>
> Sick leave may be granted when an employee is unable to work due to illness of injury....

The Personnel Handbook for the Bibb County Public Schools provides:

> Sick leave benefits can be used for any authorized period of sick leave as set forth below, but only up to the amount of benefits accrued [sic] as of the time of taking leave plus any benefits that may be advanced by the Superintendent.
>
> a. Availability: Sick leave pay may be granted when an employee is unable to perform his/her duties for any of the following reasons:
>
> (1) Sickness;
>
> (4) Medical, dental or optical examination or treatment;
>
> (6) Family illness leave;

(9) Personal leave.

b. Appointment and/or Physical Examination:
... Appointments with doctors, dentists and opticians should be scheduled outside duty hours when possible. If sick leave for this type of appointment exceeds four hours, the employee must provide a statement from the doctor stating that the employee was actually incapacitated to perform duties as a result of the treatment given. Handbook, p. 31.

Accrued sick leave may be used for absence due to illness or death in a full time employee's immediate family. Handbook, p 35.

The Local Board's attorneys discovered that Appellants had submitted reimbursement requests to the Macon City Council for various conferences on days they were simultaneously claiming sick leave benefits. The Local Superintendent notified Appellants that he was recommending that the Local Board impose disciplinary action against Appellants because they made unauthorized use of their sick leave. In addition, the Local Superintendent informed Appellants that he was recommending that the overpaid amounts be withdrawn from Appellants' pay.

The Local Superintendent showed that Appellant Dillard used eleven days of sick leave during the period December 3, 1990, through December 3, 1993, while she claimed expenses from the City of Macon for attendance at governmental conferences in Houston, Texas (three days), Atlanta, Georgia (two days), Las Vegas, Nevada (four days), and Orlando, Florida (two days). Appellant Dillard testified that the school system did not make any distinctions between personal leave and sick leave.

Evidence presented during the hearing showed that Appellant Lucas claimed two days of sick leave on days that she was attending a conference of the Georgia Municipal Association in Atlanta, January 27, 1992, and October 8, 1993, and that she was counted present on one day when she was attending a governmental conference in Atlanta, February 14, 1992. Appellant Lucas testified that she had driven from Atlanta to Macon to see her doctor for one hour on both January 27, 1992, and October 8, 1993, and that she did not make the error that resulted in her being paid for February 14, 1992.

The Local Superintendent showed that Appellant Ficklin claimed sick leave on seven days when he also made claims for reimbursement to the City of Macon for attending governmental conferences in Atlanta, Georgia, Las Vegas, Nevada, and Keysville, Georgia, during the period from January 28, 1991, and October 23, 1993. Appellant testified that he was ill or absent because of bereavement or family leave on each of the days, except one, which he claimed was supposed to be professional leave that was incorrectly coded by the professional staff and he did not have any control over the coding.

At the conclusion of the hearing, the Local Board decided that it would not impose any disciplinary measures against any of Appellants. The Local Board, nevertheless, directed that $100 per month be withheld from Appellants' pay until the overpaid amounts were repaid.

## PART III
## DISCUSSION

Because of the direction of the Superior Court and our conclusions, we address all of the

claims made by Appellants as if they were all raised in the hearing before the Local Board by each appellant, even though, on an individual basis, such claims were not made by each appellant and cannot, therefore, be reviewed initially on appeal.

O.C.G.A. § 20-2-943 provides that a Local Board can (1) dismiss a teacher, or (2) suspend a teacher without pay if a teacher is found to have violated any one of the eight prohibited activities listed in O.C.G.A. § 20-2- 940. O.C.G.A. § 20-2-943(a). Since a local board is limited by statute to these two actions, a local board cannot impose other disciplinary measures. See, Wilner, David v. Fulton Cnty. Bd. of Educ., Case No. 1991-6 (Ga. SBE, Apr. 11, 1991); aff'd. Fulton Cnty. Bd. of Educ. v. Wilner, Case No. D-90210 (Fulton Superior Ct., 7/2/91).

In reviewing the Local Board's decision, "[t]he 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 (Ga. SBE, Sep. 8, 1976)." Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

In the instant cases, Appellants claim that the Local Board cannot require them to repay the amounts paid to them because such action is not authorized by O.C.G.A. § 20-2-943. Appellants' claim, however, assumes that the recovery of overpaid amounts is a disciplinary action that falls under the purview of O.C.G.A. § 20-2-943. Even though the Superior Court's decision states that, "... the Local Board decided to impose a form of discipline that was not authorized by the Act and ruled that the Appellant must reimburse the Board . . .," we can only reiterate that we do not view the collection of improperly paid wages or salary as a punitive or disciplinary action. It is, instead, merely an administrative process for the correction of an error that does not adversely affect an employee. The employee is merely repaying public funds that should never have been paid in the first instance. As we stated in Ficklin v. Bibb Cnty. Bd. of Educ., Case No. 1994-34, collecting the overpayment "is not a disciplinary action, but, instead, is an attempt to collect a debt." Simply because the Local Board appended the directions to collect the amounts to its decision at the conclusion of the O.C.G.A. § 20-2-940 hearing does not convert a debt collection issue into a disciplinary action.

The Local Board conducted a hearing under the provisions of O.C.G.A. § 20-2-940 to act on the Local Superintendent's recommendation of Appellants' suspension without pay, which is a disciplinary action authorized under O.C.G.A. § 20-2-943. When the Local Board decided against imposing the recommended suspensions, the O.C.G.A. § 20-2-940 action was concluded in Appellants' favor. There was, therefore, no basis for them to appeal to the State Board of Education.

The Local Board merely provided direction to the Local Superintendent to take action that he could have taken as an administrative matter without the Local Board even holding a hearing. The Local Board could have dropped all reference to the repayment of the overpaid funds and the Local Superintendent would still have been authorized to seek the recovery of the overpaid funds if they were actually overpayments.

The Local Board's direction to collect the funds can also be viewed as being given in the best interests of judicial economy. If the Local Superintendent started collecting the funds without a hearing, Appellants could have filed a grievance, which would have resulted in the same facts being developed as were developed in the O.C.G.A. § 20-2-940 hearing. If Appellants filed appeals in the grievance process, the Local Board would have reviewed the same evidence and entered a decision, but the decision would not have been de novo. The approach taken by the

Local Board resulted in a savings of the time necessary to go through the grievance process. The State Board of Education concludes that the collection of amounts erroneously paid to Appellants does not constitute a disciplinary action and does not fall within the provisions of O.C.G.A. § 20-2-943.

The Superior Court directed the State Board of Education to consider whether there was a mutual departure from the terms of the employment contract, as defined in O.C.G.A. § 13-4-4 (Michie, 1982), which provides:

> Where parties, in the course of the execution of a contract, depart from its terms and pay or receive money under such departure, before either can recover for failure to pursue the letter of the agreement, reasonable notice must be given to the other of intention to rely on the exact terms of the agreement. The contract will be suspended by the departure until such notice.

The State Board of Education concludes that there was no mutual departure from the terms of the employment contract under the provisions of O.C.G.A. § 13-4-4. Appellants Dillard and Lucas claimed that there was a mutual departure from the terms of their employment contracts because the Local Board did not enforce any distinction between personal leave and sick leave. While there was some evidence that the Local Board's employees may not have always observed the distinctions between personal and sick leave, there was no evidence that the Local Board was aware that such a practice was occurring. The question of whether there has been a mutual departure from the terms of a contract is a question of fact to be determined by the trier of fact. See Plaster & Drywall Co. v. R. S. Armstrong and Bros. Co., 166 Ga. App. 373, 304 S.E.2d 500 (1983). The trier of fact in this case was the Local Board, and the State Board of Education is bound by the Local Board's finding unless there is no evidence to support the finding. See, Ransum. supra. The State Board of Education, therefore, concludes that there was no mutual departure from the terms of the employment contracts.

The Superior Court also directed the State Board of Education to consider whether the Local Board's claims for overpaid salaries are barred by a statute of limitations. The only statute of limitations suggested by Appellants is O.C.G.A. § 9-3-22, which provides:

> All actions for the enforcement of rights accruing to individuals under statutes or acts of incorporation or by operation of law shall be brought within twenty years after the right of action has accrued; provided, however, that all actions for the recovery of wages, overtime, or damages and penalties accruing under laws respecting the payment of wages and overtime shall be brought within two years after the right of action has accrued.

Appellant Dillard raised the claim that O.C.G.A. § 9-3-22 bars the Local Board from recovering the improperly paid amounts because more than two years expired before the Local Board sought any recovery. By its terms, however, the statute is limited to actions by individuals; it does not apply to governmental entities seeking to recover the improper payment of public funds. The State Board of Education, therefore, concludes that the Local Board is not barred by any statute of limitations from recovering any improperly paid amounts.

Appellant Lucas claims she did not violate the sick leave policy on January 27, 1992, and October 8, 1993, and did not make the error that resulted in her being paid on February 14, 1992. She also claims that the failure of the principal to verify the validity of her claimed sickness bars the Local Board from claiming that she was not sick on January 27, 1992, and October 8, 1993. Her claim that she did not violate the sick leave policy on January 27, 1992, and October 8, 1993, is based on her testimony that she visited a doctor for one hour on each day and then drove back to Atlanta to attend a governmental conference. The Local Board's Personnel Handbook provides that if an employee is to be absent for more than four hours, "the employee must

provide a statement from the doctor stating that the employee was actually incapacitated to perform duties as a result of the treatment given." Handbook, p. 31. The Handbook evidences a clear intent that Appellant Lucas should have returned to her duties following the one-hour visits to the doctors. With respect to February 14, 1992, Appellant admitted that she was not present. There was, therefore, evidence before the Local Board that would permit it to determine that Appellant Lucas improperly took sick leave when she was attending to personal matters and that she was improperly paid on February 14, 1992.

Appellant Ficklin claims that he was sick on the days he claimed sick leave. He claimed that he became sick after he arrived at the conference in Las Vegas and similarly became sick after he arrived at a conference in Atlanta. The Local Board could conclude that if such convenient illnesses did not prevent Appellant Ficklin from attending the conferences, then he was well enough to attend to his duties owed to the Local Board.

Appellant Ficklin also claims that he was attending a funeral for his aunt on February 15, 1992, but at the same time he made a claim to the City of Macon that he was attending a conference in Atlanta on February 14, 15, and 16, 1992. Appellant Ficklin falsified either his claim that he was on bereavement leave or his claim that he was attending a conference in Atlanta. The Local Board was authorized, as the finder of fact, to determine that he falsified the claim that he was on bereavement leave.

In the final analysis, these appeals involve elected legislative public officials who submitted claims to the Local Board that they were sick while at the same time they submitted claims to the City of Macon that they were attending governmental conferences on behalf of the City of Macon. The Local Board received evidence concerning the claims submitted to both entities for the same dates. There was, therefore, evidence before the Local Board that would permit it to find that Appellants improperly made claims for sick leave. Such a finding would have permitted the Local Board to impose the disciplinary measures sought by the Local Superintendent, even though it decided against such action. Nevertheless, collecting back amounts that were improperly paid, primarily because trusted public officials represented that they were sick when they were not, does not constitute a disciplinary measure barred because of the limitations contained in
O.C.G.A.§ 20-2-943.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's direction to the Local Superintendent to collect the amounts of improperly paid wages obtained by Appellants because they claimed sick leave when they were attending to personal business as elected public officials. The Local Board's decision in each case, therefore, is
SUSTAINED.

This 14th day of September, 1995.

Mr. McGlamery and Dr. Thomas were not present. The seat for the Tenth District is vacant.

Robe t M. Brinson
Vice Chairman for Appeals