

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JERI GURLEY,	:	
	:	
Appellant,	:	
	:	CASE NO. 1996-33
vs.	:	
	:	DECISION
GORDON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Jeri Gurley (Appellant) from a decision by the Gordon County Board of Education (Local Board) to sustain the Local Superintendent's issuance of a letter of reprimand, which accused her of insubordination and willful neglect of duty. Appellant claims that the burden of proof was improperly placed upon her and there was no evidence presented that she was insubordinate or willfully neglected her duties. The Local Board's decision is reversed.

O.C.G.A. § 20-2-944 provides:

A local school superintendent may write a letter of reprimand to a teacher for any valid reason ... [T]he teacher ... receiving such a letter of reprimand shall have the right to appeal the decision of the superintendent to the local board of education, the hearing to be conducted according to this part. The local board shall have the right to either affirm the decision of the superintendent or to reverse it

On March 13, 1996, the Local Superintendent issued a letter of reprimand to Appellant, who worked as a media specialist in the Gordon Central High School. The Local Superintendent outlined four broad areas of concern in his letter: (1) improper management of the media center during the school day that resulted in complaints by the other teachers and failure to follow the directives of the principal to establish guidelines for usage of the media center, all of which constituted insubordination and neglect of duties as media specialist; (2) failure to follow directions concerning monitoring of the media center during flexible hours, which constituted insubordination and neglect of duties; (3) failure to comply with school and system procedures by (a) not monitoring personal calls from the media center, and (b) interfering with vendors providing services to the media center, which actions constituted insubordination and neglect of duties, and (4) an inability to work with teachers, administrators, other school personnel and vendors. The Local Superintendent directed Appellant to observe two other media specialists in other high schools, to attend a seminar on conflict resolution, and to review a book on the habits of effective people.

Appellant appealed to the Local Board. The Local Board heard the matter on April 23, 1996. At the beginning of the hearing, the hearing officer, the attorney representing the superintendent, and Appellant's attorney agreed that Appellant had the burden of proof since she was the appealing party. At the conclusion of the hearing, the Local Board voted to sustain the Local Superintendent's issuance of the letter of reprimand. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that the burden of proof was improperly placed upon her at the start of the hearing. The Local Board claims that Appellant is estopped to raise the issue on appeal because her attorney agreed with the placement at the beginning of the hearing. Additionally, the Local Board claims that the burden of proof was properly placed upon Appellant because she was the appealing party.

In addition, Appellant claims that there was no evidence presented of insubordination or willful neglect of duty to support the issuance of the letter of reprimand. The Local Board argues that there was evidence of insubordination and willful neglect of duty, but even if there was no such evidence, there was evidence that Appellant had an inability to get along with her fellow employees, which is a "valid reason" for issuing a letter of reprimand.

Appellant's claims regarding the lack of evidence raises the issue of whether a Superintendent has to prove insubordination and willful neglect of duty when such terms are mentioned in a letter of reprimand, which can be issued for any valid reason. For the reasons hereafter set out, we do not think there is any necessity to present such proof

A letter of reprimand is a management tool that the Legislature provided to local superintendents. The Legislature carved it out as a special category in O.C.G.A. § 20-2-944 without placing any restrictions on its use beyond the broad term "any valid reason" and permitting review by the local board of education. If the Legislature wanted letters of reprimand to be limited to the categories of offenses set forth in O.C.G.A. § 20-2-940, it would have referred to that section as the reasons for a letter of reprimand rather than permitting such letters to be issued for any valid reason. If there was a need to prove the elements of insubordination or willful neglect of duty, then the need for the Legislature to carve out letters of reprimand as a separate category would be negated because such charges can be made under the provisions of O.C.G.A. § 20-2-940. The State Board of Education concludes that the plain language of O.C.G.A. § 20-2-944 permits a local superintendent to issue a letter of reprimand for any valid reason without the need to prove insubordination or willful neglect of duty if the superintendent states in the letter that certain actions constitute insubordination or willful neglect of duty. This permits the local superintendent to use the letter of reprimand as a corrective instrument subject to the discretion of the local board of education. In addition, the State Board of Education concludes that in view of the purpose of the letter of reprimand, it is not necessary for a local board of education to reverse the local superintendent's decision to issue a letter of reprimand if a teacher establishes that one part of the letter of reprimand is in error.

The burden of proof in any disciplinary matter is upon the local board or the school system. O.C.G.A. § 20-2-940(e)(4). In the instant case, all of the parties erroneously agreed at the beginning of the hearing that the burden of proof was on Appellant. The Local Board argues that Appellant is estopped to raise any issue about the placement of the burden of proof. The placement of the burden of proof, however, is such a fundamental element of due process that it should not be changed without substantial justification. Where, as here, the burden of proof is changed as a result of an error in understanding by the parties and the hearing officer, reversal is required. Appellant attempted to answer the charges set out in the letter of reprimand, but substantial evidence of the details of the charges was presented by the Local Superintendent. The additional details were prejudicial to Appellant, who had attempted to prove a negative in a vacuum. The State Board of Education concludes that Appellant was denied procedural due process by having the burden of proof cast upon her.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board erred in placing the burden of proof upon Appellant and denied her procedural due process. Accordingly, the Local Board's decision is REVERSED.

This 12th day of September, 1996.

Ms. Julie D. Keeton and Mr. A. Joe McGlamery were not present. The seat for the Eleventh District is vacant..

Robert M. Brinson
Vice Chairman for Appeals