

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>LARRY LEWIS,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1996-43</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>CARROLL COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by Larry Lewis (Appellant) from a decision by the Carroll County Board of Education (Local Board) to suspend him without pay for thirty days after finding him insubordinate because he violated written and oral directives to avoid physically aggressive conduct with his middle school students. Appellant claims that his actions were appropriate under the circumstances and he was not insubordinate. The Local Board's decision is sustained.

Appellant has taught for the Carroll County Board of Education for fourteen years, primarily as a physical education teacher. Appellant's principal gave him a written directive on October 3, 1995, to, "take a minute to reflect on how your actions might be perceived by others before you take action." The principal issued another directive to Appellant in January, 1996, to, "... Be very sure that in future dealings with students you do not use force of any kind except to protect another child from harm ...."

On April 10, 1996, as Appellant led his physical education class outside, a female student became disruptive and Appellant directed her to go to the gymnasium. The student refused. Appellant called the principal's office for assistance and was told that no one was available to help him. Appellant then took the student by the arm and led her to the gymnasium. In the area of the doorway, the student resisted. The student testified that Appellant put his arm around her neck. Appellant admitted that he used physical force with the student.

The Local Superintendent offered Appellant an opportunity to agree to a three-day suspension without pay if he agreed that his actions were improper. Appellant refused the settlement offer and the Local Superintendent asked the Professional Practices Commission

to investigate. After receiving the Professional Practices Commission report, the Local Superintendent recommended termination of Appellant's teaching contract.

The Local Board conducted a hearing on June 19, 1996. Appellant sought to recuse one of the members of the Local Board because he is the principal's brother-in-law. The member refused to recuse himself. Appellant also objected to the designated hearing officer so the hearing officer acted as legal adviser to the Local Board. After the hearing, the Local Board found that Appellant was insubordinate and suspended him without pay for thirty days because he violated the principal's directives to avoid physical contact with his students. Appellant appealed to the State Board of Education.

Appellant claims that the evidence does not show that he was insubordinate because the directive from the principal was unclear and he did what he understood the principal wanted. He called the principal's office and asked for assistance, but had to resolve the situation on his own because no one was available to help him. He claims that insubordination requires an element of willfulness, which is not evident because he was attempting to comply with the directive.

"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, 242 S.E.2d 374 (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).

The directive from the principal stated that Appellant was not to use force of any kind unless necessary to prevent harm. The record shows that the other students and Appellant were not in any danger of harm from the student. There is nothing in the directive that Appellant is to use force if someone is unavailable to assist him. The State Board of Education concludes that there is evidence that supports the Local Board's decision that Appellant was insubordinate.

Appellant next claims that the punishment was excessive because of the initial offer of a three-day suspension. The three-day suspension offer was made by the Local Superintendent and not by the Local Board. The offer was also contingent upon Appellant accepting responsibility for his actions, which he refused to accept. The Local Board was authorized to dismiss Appellant or suspend him for up to sixty days without pay. O.C.G.A. § 20-2-943. The initial offer was not accepted and cannot, therefore, lessen the Local Board's statutory authority. The State Board of Education concludes that the punishment was within the Local Board's authority and, therefore, not excessive.

Appellant next claims that he was denied due process because the brother-in-law of the principal did not recuse himself from hearing the case. Appellant cites O.C.G.A. § 15-1-8(2), which provides that a judge shall not sit if related to an interested party within the sixth degree. The principal, however, was only a witness in the case, not a party, and O.C.G.A. § 15-1-8(2) is inapplicable. Appellant has not shown that the board member was biased and there was no need for him to recuse himself.

Appellant also claims it was error for the attorney who was designated as a hearing officer to serve as the legal advisor to the Local Board after Appellant objected to his service as a hearing officer. O.C.G.A. § 20-2-940(e)(4) provides that the chairman, or a hearing officer acceptable to the parties, may decide all questions relating to the admissibility of evidence or other legal matters. In the instant case, the attorney advised the chairman on what rulings to make and the chairman made the rulings. Appellant has not cited any rule that prohibits a local board from having a legal adviser available during a hearing. Since the rulings were made by the chairman of the Local Board, the State Board of Education concludes that there was no error.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to sustain the Local Board's decision, that the Local Board acted within its authority, and that Appellant was not denied procedural due process. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_ day of November, 1996.

Robert M. Brinson  
Vice Chairman for Appeals