

**STATE BOARD OF EDUCATION**  
**STATE OF GEORGIA**

<b>JOIE KELLY,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1996-68</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>GWINNETT COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by Joie Kelly (Appellant) from the Gwinnett County Board of Education's (Local Board) failure to conduct a hearing in connection with a grievance she filed to complain that she had been improperly treated in connection with her request for a transfer to another school. Appellant claims that her grievance was improperly handled at all levels because she was not given a hearing at three levels of the grievance process. Because the Local Board did not conduct a hearing, the State Board of Education lacks jurisdiction to consider Appellant's appeal. The appeal, therefore, is dismissed.

In February, 1996, Appellant, who has taught for the Gwinnett County School System for more than twenty years, asked to be assigned to the eighth grade at the Snellville Middle School. Her principal, however, assigned her to the sixth grade, which was her second assignment choice. Appellant then asked to be transferred to McConnell Middle School, a new school that was to be opened at the beginning of the 1996-1997 school year. The principal at the McConnell Middle School wrote to Appellant and told her that there was a problem with the recommendation from her principal at Snellville Middle School. Appellant's principal informed her that he did not approve the transfer because she had already accepted a position to teach in the sixth grade at Snellville Middle School. By the time the two had resolved the issue, the position at McConnell Middle School had been filled. Appellant then filed a grievance under the provisions of O.C.G.A. § 20-2-989.5 *et seq.* and Local Board Policy GAE. The Local Board's Policy GAE provides for four levels of hearings, the first of which is before the grievant's supervisor, which, in this case, was Appellant's principal at Snellville Middle School.

In her grievance, which she filed on June 20, 1996, Appellant said she was filing the grievance because:

1. You have been deceptive, unreasonable, and autocratic regarding my teaching placement.
2. Although there were available positions you denied my request for one, completely disregarding merit and seniority.
3. You have impeded my attempts to transfer by delaying my interview with Mr. Campbell. I did not receive his response until June 14, 1996.
4. I have been ignored, belittled, and discriminated against.

In an undated letter, and without granting a hearing, Appellant's principal wrote to Appellant and informed her that he had reviewed her complaint and could not find any basis for her complaint about not being transferred because she had not identified any statute, policy, rule, regulation, or written agreement that had been violated. Additionally, he wrote:

I am concerned about your feelings regarding discrimination, being ignored and belittled. That is certainly never the intent of any placement of personnel at SMS. We simply make placements on the needs of our students. I will be more than happy to sit down and address a specific complaint under the guidelines of the policy. Please feel free to contact me for such a meeting.

Appellant then filed an appeal from the principal's decision. She was granted a hearing at Level 2, where she presented all of her complaints. The Level 2 administrator decided that Appellant was not due any relief because she had failed to establish any misinterpretation, misapplication or violation of any statutes, policies, rules, regulations or written agreements or the applicability of any "policies and procedures that she had cited in the level 2 appeal form." Appellant then appealed to the next level, which was to the Local Superintendent.

On August 23, 1996, the Local Superintendent issued a decision that stated that Appellant was not entitled to any relief under Policy GAE and would not be given "an opportunity ... to present evidence and be heard at Level 3." The basis for the decision was because Appellant "failed to clearly establish the misinterpretation, misapplication or violation of statutes, policies, rules, regulations or written agreements. She has failed to clearly demonstrate the applicability of policies and procedures cited in her Level 3 appeal form." Appellant then filed an appeal with the Local Board.

The Local Board informed Appellant that her appeal would not be heard because complaints about personalities were not grievable and "bare allegations of discrimination are not subject to complaint without some supporting factual allegations. Appellant then filed her appeal to the State Board of Education.

In her appeal to the State Board of Education, Appellant claims that the Local Board denied her procedural due process by not following state law and its own policies concerning grievances. The Local Board argues that the appeal should be dismissed because it did not hold a

hearing and Appellant did not file a proper grievance.

O.C.G.A. § 20-2-989.5 provides that:

It is the intent of this part to resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings so that good morale may be maintained, effective job performance may be enhanced, and the citizens of the community may be better served.

O.C.G.A. § 20-2-989.6 defines a complaint as:

“complaint” means any claim by a certified employee of any local unit of administration who is affected in his or her employment relationship by an alleged violation, misinterpretation, or misapplication of statutes, policies, rules, regulations, or written agreements of the local unit of administration with which the local unit of administration is required to comply.

O.C.G.A. § 20-2-989.8 requires a hearing and an opportunity to present evidence and examine witnesses at each level of the grievance process. It also provides that the local board, “when hearing an appeal from a prior complaint level, shall hear the complaint de novo. . .

O.C.G.A. § 20-2-1160 requires that before the State Board of Education has jurisdiction must review any action taken by the local board of education, a local board of education to conduct a hearing. O.C.G.A. § 20-2-1160(a). See, also, Boney v. County Board of Education of Telfair County, 203 Ga. 152, 45 S.E.2d 442 (1947). In the instant case, the Local Board did not conduct a hearing. Thus, and notwithstanding any appearance that the Local Board’s action was improper, the State Board of Education does not have jurisdiction to review this matter. The proper course of action for Appellant is to seek mandamus before the superior court.

Appellant argues that the O.C.G.A. §§ 20-2-989.5 *et seq.* vests the State Board of Education with jurisdiction to consider grievances independently of the jurisdictional requirements of O.C.G.A. § 20-2-1160. This argument is based upon the provisions of O.C.G.A. § 20-2-989.11, which provides:

Appeals from the decision of the local unit of administration [the local board] to the Georgia Board of Education shall be governed by state board policy and Code Section 20-2-1160.

Appellant argues that this reference to O.C.G.A. § 20-2-1160 only establishes the procedural requirements of an appeal and does not establish any jurisdictional requirements. The State Board of Education disagrees with Appellant’s interpretation of its jurisdiction.

The grievance procedures set out in O.C.G.A. §§ 20-2-989.5 *et seq.* were intended to provide a method of dispute resolution at the lowest possible level. The procedures, however, were not intended to replace O.C.G.A. § 20-2-1160 as the underlying basis for the State Board of

Education to consider appeals from the decisions of local boards of education. Instead, it merely provides an employee with an opportunity to alternatively resolve a dispute without the necessity of initially having a hearing before the local board of education. An employee is thus given the option of attempting to resolve the problem at a lower level, or initially having a hearing before the local board. O.C.G.A. § 20-2-989.7(b) provides that a certified employee who chooses to appeal under O.C.G.A. § 20-2-1160 cannot pursue the same complaint under the provisions of O.C.G.A. §§ 20-2-989.5 *et seq.* Even though it is stated in the negative, the implicit assumption in O.C.G.A. § 20-2-989.7 is that substantive differences do not exist; it is only the procedures that differ. The State Board of Education does not believe the legislature intended to establish different jurisdictional standards based on the method the employee chooses to resolve the dispute.

Based upon the foregoing, it is the opinion of the State Board of Education that it lacks jurisdiction to consider Appellant's appeal because the Local Board did not conduct a hearing. Accordingly, the appeal is hereby DISMISSED.

This 10<sup>th</sup> day of April, 1997.

Dr. Bill Grow, Ms. Willou Smith and Mr. J.T. Williams were not present.

Larry Thompson  
Vice Chairman for Appeals