

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GWENDOLYN BAKER.,	:	
	:	
Appellant	:	
	:	
	:	CASE NO. 1998-18
	:	
vs.	:	
	:	
DOUGHERTY COUNTY	:	
BOARD OF EDUCATION	:	
	:	DECISION
Appellee	:	

This is an appeal by Gwendolyn Baker (Appellant) from a decision by the Dougherty County Board of Education (Local Board) to suspend her for seven days without pay after finding that she was insubordinate to her principals. Appellant claims that the Local Board failed to establish that she was insubordinate. The Local Board's decision is sustained.

On October 23, 1997, Appellant's daughter entered the high school where Appellant was a teacher. An assistant principal determined that Appellant's daughter did not have a pass and he told her to go to the office and obtain a pass. Appellant confronted the assistant principal and told him he had no business telling her daughter what to do. During the confrontation, Appellant pointed her finger at the assistant principal and told him that he did not know his job, that he was the lowest thing on the totem pole, and that he could not tell her what to do. The assistant principal reported the incident and an assistant superintendent met with Appellant to discuss the matter. Appellant apologized and no further disciplinary action was taken. Appellant, however, was instructed that any further incidents of insubordination would result in disciplinary action.

On January 14, 1998, the principal learned that Appellant had not followed the posted instructions in giving the semester examinations. Appellant was supposed to test her students at 1:30 p.m., but she started the test at 12:45 p.m. The principal went to Appellant's classroom to ask about the situation. When he arrived, he saw that her classroom was darkened and her students were either sleeping or watching videotapes. The principal called Appellant into the hallway and asked her why she had given the test early after he had given all the teachers instructions on when the tests were to be given. Appellant responded, "Let's just say I forgot!" When the principal pressed her for a better explanation, Appellant said she followed what she had done in the previous year. The principal said he was not interested in what she had done in previous years. At that, Appellant raised her voice and responded that she was not interested in what he had to say. The principal directed Appellant to return to her classroom because he did

not want the situation to escalate into a shouting match. The principal then recommended disciplinary action against Appellant for insubordination.

The Local Superintendent charged Appellant with insubordination under the provisions of O.C.G.A. § 20-2-940 because of her actions on October 23, 1997 and on January 14, 1998. In addition, the Local Superintendent charged Appellant with other good and sufficient cause because of the high failure rate in her class. The Local Board conducted a hearing on February 9, 1998 and decided that Appellant was insubordinate and suspended her for seven days without pay. In a letter dated February 10, 1998, the Local Superintendent notified Appellant of the Local Board's decision, but did not give her any notice about the appeal procedures. Appellant then filed an appeal with the State Board of Education on March 2, 1998.

On March 11, 1998, the Local Superintendent submitted Appellant's appeal to the State Board of Education along with a motion to dismiss because Appellant failed to include a statement of the reasons why the decision was being appealed and failed to provide the Local Superintendent with a copy of a transcript of the hearing. On March 12, 1998, Appellant filed an "Amended Appeal," which set forth the reasons why the decision was appealed, requested the Local Superintendent to prepare a copy of the transcript for inclusion with the appeal, and acknowledged Appellant's obligation to pay for the transcription. The transcript was received by the Local Superintendent on March 31, 1998 and submitted to the State Board of Education.

On April 29, 1998, Appellant filed a brief with the State Board of Education. Among her claims was a claim that the Local Board failed to prove insubordination because a charge letter was not introduced into evidence, thus limiting the Local Board to the principal's testimony that Appellant was charged with insubordination because of the attitude she displayed during the January 14, 1998 incident.¹¹ Appellant, therefore, claims that having a perceived wrong attitude does not constitute insubordination.

In response to Appellant, the Local Board attached a copy of the charge letter to its reply brief, along with several other documents that were not introduced into evidence during the hearing before the Local Board. Appellant filed a motion to strike the documents since they were not a part of the record. The Local Superintendent then filed a supplement to the record that included the documents that were attached to the reply brief.

The appeal is now before the State Board of Education with both parties claiming that the procedural errors by the other party demand a decision in their favor while their own procedural errors should be disregarded.

O.C.&A. § 20-2-1160(a) provides, in part:

¹ Another teacher did not give the examination at the proper time and was not charged with insubordination because she was contrite when confronted by the principal.

[T]he [local] board shall notify the parties in writing of the decision and of their right to appeal the decision to the State Board of Education and shall clearly describe the procedure and requirements for such an appeal.

O.C.G.A. § 20-2-1160(a) (Michie, 1996 ed.)

O.C.G.A. § 20-2-1160(b) provides, in part:

The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the transcript of evidence and proceedings, the decision of the local board, and other matters in the file relating to the appeal to the state board.

O.C.G.A. § 20-2-1160 (Michie, 1996 ed.)

The Local Board failed to follow the statutory requirement of O.C.G.A. §20-2-1160(a) to inform Appellant of her right to appeal and the procedures and requirements for an appeal. Notwithstanding, Appellant filed a notice of appeal 21 days after the Local Board made its decision. Rather than extending its own employee the common courtesy of informing her that it deemed the notice of appeal deficient, the Local Board waited until the 30th day after its decision was issued to file a notice to dismiss for failure to state the reasons for the appeal. On the 31st day after the Local Board issued its decision, Appellant filed an amended appeal, set forth her specific reasons for the appeal, and acknowledged her responsibility for the costs of the transcript. Appellant's counsel also filed a statement that he had been engaged in coordinating the Salvation Army flood relief in Albany, closing his father's legal practice because of a medical emergency, and dealing with a medical crisis of his wife's during this period.

If an appeal is not filed within 30 days after a local board's decision, the State Board of Education will dismiss the appeal because it lacks jurisdiction to consider the appeal. *See, Josh W v. Gwinnett Cnty. Bd. of Educ.*, Case No. 199 1-15 (Ga. SBE, Jun. 13, 1991). The State Board of Education, however, has never deemed the failure to explicitly state the reasons for the appeal to be a fatal defect. Appeals filed under O.C.G.A. § 20-2-1160 are frequently filed by non-lawyers who fail to appreciate the necessity for stating why they are appealing. If the reasons for the appeal are later stated in a brief, the State Board of Education has a basis for making a decision and the local board has received notice of why the appeal should be considered before it has to file a response. The local board is not prejudiced and the State Board of Education is able to accomplish its functions without delay under this approach.

The Local Board argues that the State Board of Education's decision in *Graham v. Clayton Cnty. Bd. of Educ.*, Case No. 1988-6 (Ga. SBE, 1988) requires dismissal of Appellant's appeal. The facts in *Graham*, however, are clearly distinguishable from the instant case. In *Graham*, the appellant failed to state the reasons for the appeal, and, despite repeated requests from the Georgia Department of Education, did not file a transcript or a brief. The State Board of Education dismissed the appeal because the appellant was deemed to have abandoned the appeal. Contrary to the Local Board's arguments, the appeal was not dismissed simply because the appellant failed to provide a statement of reasons or file a transcript. Instead, the appeal was dismissed because the appellant failed totally to provide any basis for appeal; the State Board of Education had nothing from which it could determine why the appellant had filed an appeal. Since Appellant in the instant case filed her notice of appeal within 30 days after the Local Board's decision and provided her reasons for appeal in a timely manner, the State Board of Education concludes that there is no basis for dismissing the appeal.

Appellant's claims that the Local Board failed to prove insubordination. Appellant arrives at this conclusion by arguing that the Local Board failed to introduce the letter of charges into evidence. Thus, Appellant argues that no basis exists for determining the charges without looking at the transcript. The transcript shows that Appellant's principal testified that Appellant's giving of a test at the wrong time was not the basis for the insubordination charge. Instead, the basis was the attitude Appellant displayed when he talked with her. Appellant then argues that attitude cannot serve as a basis for finding insubordination.

As Appellant argues, the State Board of Education is limited to reviewing the record of the hearing before the Local Board. *See, D. E. v. Coffee Cnty. Bd. of Educ.*, Case No. 1991-21 (Ga. SBE, Sep. 21, 1991). The Local Superintendent, therefore, cannot "supplement" the record and the State Board of Education limits its review to the transcript and documents that were entered into evidence at the hearing.

Insubordination requires some intentional disregard of the orders of a superior. "Mere negligence or error does not constitute insubordination. Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination." *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, 1986). *See, also, Jones v. Montgomery Cnty. Bd. of Educ.*, Case No. 1982-13 (Ga. SBE, Nov. 11, 1982).

Although Appellant claims that the record shows that she was charged with insubordination because she did not apologize to the principal, the Local Board could find that her remarks showed that she intentionally disregarded the principal's directives about when to start the tests. The other teacher apologized for her error, thus indicating that she merely made a mistake in following the directions. Appellant, however, responded to the principal in a manner that indicated it was none of his business when she gave the test. Thus, despite Appellant's attempt to characterize the insubordination as arising from her attitude, the Local Board could find that her attitude showed that she willfully disobeyed the principal's instructions.

“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-il (Ga. SBE, Sep. 8, 1976).” *Roderick J v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The State Board of Education, therefore, concludes that there was some evidence to support the Local Board’s finding of insubordination.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision. Accordingly, the Local Board’s decision is

SUSTAINED.

This 13th day of August 1998.

Dr. Bill Grow, Ms. Willou Smith, Ms. Palmira Braswell, Mr. J. T. Williams, Jr., and Mr. Philip Wilheit were not present.

Larry Thompson
Vice Chairman for Appeals