

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>LYKISHA VAUGHAN,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2008-55</b>
	:	
<b>FULTON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Lykisha Vaughan (Appellant) from a decision by the Fulton County Board of Education (Local Board) to terminate her teaching contract based upon insubordination, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the charges and that the Local Board denied her due process. The Local Board's decision is sustained.

Appellant was serving as the Latin teacher at Tri-Cities High School and the chair of the foreign languages department. On January 10, 2008, a student in Appellant's Latin class began acting up and making comments to Appellant to the point that Appellant finally said to the student, "Get the f\*\*\* out of my class." Appellant reported the incident to her principal, who placed her on a professional development plan (PDP) and reported the incident to the personnel department. During an investigation of the incident by the personnel department, an investigator learned that Appellant had been involved in romantic relations with two of her co-workers, one of whom she evaluated as a Spanish teacher. Following her relationship with the Spanish teacher, Appellant became involved with another teacher and became pregnant. Appellant's ex-husband called the second teacher and threatened him in connection with demands that the second teacher pay for an abortion. Although Appellant did not discuss her personal relationships with anyone at the school, the two teachers she was involved with talked and her relationships were common knowledge at the school.

Based upon the above facts, the chief of personnel decided to move Appellant to another school. On January 23, 2008, the chief of personnel met with Appellant and informed her of the transfer and that the school system would seek not to renew her teaching contract. The chief of personnel also gave Appellant the option of foregoing a non-renewal and resigning effective as of the end of the school year, which Appellant accepted. Appellant was directed to report to her new school on January 28, 2008.

Appellant's children became sick and she obtained leave for January 28 and 29. Appellant was then directed to report to the chief of personnel on the morning of January 30, 2008. At the meeting, the chief of personnel told Appellant that she would be teaching Latin from her new school via distance learning to her class at Tri-Cities High School because the school system was unable to obtain a replacement for her. Appellant drove to the parking lot of her new school and then drove back to the personnel department for a second meeting with the chief of personnel, where she told him that she would not teach via distance learning. The chief of personnel told her to reconsider her actions, that she was being insubordinate, and that her failure to teach could result in her termination. Appellant still refused and the meeting ended. Appellant then went home and emailed her principal that she was taking a personal leave day.

The next day, Appellant went to her new school and met with her new principal. The principal called the chief of personnel to report that Appellant had come into the office and the chief of personnel told the principal that Appellant needed to go home. Appellant was charged with insubordination, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. At Appellant's request, a hearing on the charges was held before a three-member tribunal. The tribunal found that the charges were substantiated and recommended termination of Appellant's contract. The Local Board adopted the tribunal's recommendation and Appellant appealed to the State Board of Education.

On appeal, Appellant raises several issues that were not raised before the tribunal. "If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made." *Hutcheson v. DeKalb Cnty. Bd. of Educ.*, Case No. 1980-5 (Ga. SBE, May 8, 1980). The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the Local Board. *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983). During the hearing, Appellant did not challenge the adequacy of the charge letter. Appellant's first six arguments, concerning the Local Board's failure to list different matters in the charge letter, are, therefore, too late and will not be considered by the State Board of Education.

Similarly, Appellant did not raise any issues about hearsay testimony or due process violations under state and federal law during the hearing. These issues will also not be considered by the State Board of Education.

Appellant's other claims on appeal are: (1) the evidence does not support willful neglect of duty in failing to report to the new high school; (2) the tribunal failed to consider the fact that Appellant was on a PDP with regard to her reaction to the unruly student in her classroom; (3) Appellant's reaction to the unruly student in her classroom was not a willful neglect of duty; (4) Appellant was not insubordinate in refusing to teach via distance learning; (5) the decision to transfer Appellant to a new school was arbitrary and capricious; (6) the decision to transfer Appellant to a new school was punitive; (7) the decision to transfer Appellant to a new school based on Appellant's relationships with other teachers violated Appellant's fourteenth amendment rights; (8) the decision to transfer Appellant to a new school based upon Appellant's report of suspected child

abuse violates Local Board policy and state law; (9) the chief of personnel coerced Appellant into resigning and accepting a transfer, and (10) the testimony of the chief of personnel violated the Code of Ethics for educators.

Appellant's contract was terminated because she swore at a student in her classroom and she refused a direct order from a superior. Issues 5, 6, 7, and 8, above, concerning Appellant's transfer to a new school, are therefore without merit. Appellant did not contest her transfer in any manner until the hearing. As pointed out by the Local Board, the transfer decision was not one made by the Local Board after a hearing on a contested issue, which deprives the State Board of Education of any jurisdiction to consider the transfer question. The decision made by the Local Board was to terminate Appellant because she swore at a student and she refused a direct order from a superior, both actions that did not rely on the administrative decision to transfer Appellant.

Appellant claims that she was coerced into resigning and accepting a transfer, issue 9, above. This claim is also without merit since the hearing before the tribunal was not about Appellant's resignation or transfer but about her responses to a student and to a superior. Although the chief of personnel gave Appellant a Hobbesian choice of resigning or facing a non-renewal proceeding, Appellant did not withdraw her resignation and was not contesting her resignation, regardless of why she submitted it. While the actions of the chief of personnel might have a bearing in a different context, his actions in the instant case are immaterial to Appellant's responses to a student and to a superior.

Appellant claims that the chief of personnel violated the Code of Ethics for educators because he testified that he did not have sufficient information to terminate Appellant when he asked her to resign but he told her otherwise, issue 10, above. This claim is misplaced since the chief of personnel is not on trial and no decision was made regarding his testimony about the sufficiency of the evidence he possessed. Possession of evidence of cursing a student in the classroom would undoubtedly support the chief of personnel's statement. The State Board of Education concludes that this claim is without merit.

Appellant claims that the tribunal failed to consider the fact that she was on a PDP concerning her interaction with the unruly student in her classroom. This evidence, however, was presented to the tribunal by Appellant and there is nothing in the record to indicate that the tribunal failed to consider it. The fact that the tribunal did not mention the PDP in its findings of fact does not establish that it was overlooked. The State Board of Education concludes that Appellant's claim that the tribunal failed to consider the PDP is without merit.

Appellant also claims that there was no evidence to support the charges of willful neglect of duty in failing to report to the new school and in swearing at a student in her classroom or to support the charge of insubordination. "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). In the instant case, there was evidence that Appellant deliberately refused a valid direct order from a superior to report to a new position. There was also evidence that Appellant lost her temper and swore at a student in her classroom. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision to terminate Appellant's teaching contract.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that evidence exists to support the Local Board's decision to terminate Appellant's teaching contract and that Appellant was not denied any due process rights. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of July 2008.

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William Bradley Bryant  
Vice Chairman for Appeals