

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JULIA HOLLINS,	:	
	:	
Appellant,	:	CASE NO. 2010-31
	:	
vs.	:	
	:	
COBB COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Julia Hollins (Appellant) from a decision by the Cobb County Board of Education (Local Board) not to renew her teaching contract because of insubordination, incompetency, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local Board's decision should be reversed because a hearing was not held within ten working days after she was suspended, there were no findings of fact entered, and there was no evidence that she was insubordinate, incompetent, willfully neglected her duties, or that other good and sufficient cause existed to support the Local Board's decision. The Local Board's decision is reversed and remanded.

Appellant was employed by the Local Board as a middle school special education teacher in a school that used a co-teacher method, which required Appellant to work with the regular education teachers in preparing lesson plans and teaching classes. On March 16, 2009, Appellant's principal removed her from the classroom, assigned her to administrative leave with pay, and sent her home. On March 26, 2009, the Local Superintendent informed Appellant that her contract would not be renewed for the 2009-2010 school year because of insubordination, incompetency, willful neglect of duty and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant requested a hearing on the charges, which was held August 7 and September 16, 2009, before three members of the Local Board sitting as a tribunal. At the conclusion of the hearing, the tribunal recommended against renewing Appellant's contract without making any findings of fact or providing any basis for the decision. The Local Board approved the tribunal's recommendation and Appellant then filed an appeal with the State Board of Education.

On appeal, Appellant claims that the Local Board's decision should be reversed because the Local Board violated O.C.G.A. § 20-2-940(g) by not giving her a hearing within ten working days after she was placed on administrative leave. Appellant also claims that the Local Board's decision should be reversed because the tribunal failed to make any findings of fact as required by O.C.G.A. § 20-2-940(e)(1). Additionally,

Appellant claims there was no evidence to support the charges of incompetence, insubordination, willful neglect of duties, or other good and sufficient cause.

O.C.G.A. § 20-2-940(g) provides that a teacher can be temporarily relieved from duty by the superintendent for up to ten working days, “and during such period it shall be the duty of the local board to conduct a hearing on the charge....” In the instant case, Appellant was sent home on March 16, 2009, and she was not permitted to return to her classroom. The Local Board argues that O.C.G.A. § 20-2-940(g) is inapplicable because the direction was given by Appellant’s principal and not the Local Superintendent, and she was not relieved from her duties because she was required by her principal to monitor her email account and be available to answer questions; that she was on “administrative leave” with pay and simply reassigned to be at home rather than in the classroom. The Local Board’s argument, however, misconstrues the provisions of O.C.G.A. § 20-2-940(g).

O.C.G.A. § 20-2-940(g) states: “The superintendent of a local school system may temporarily relieve from duty any teacher” (emphasis added). The statute further provides that “[d]uring the period that the teacher ... is relieved from duty prior to the decision of the local board, the teacher ... shall be paid all sums to which he is otherwise entitled.”

“The argument advanced by the Local Board deprives O.C.G.A. § 20-2-940(g) of all its meaning, i.e., the Local Board’s argument eliminates the need for a speedy resolution in those situations where the teacher’s conduct is deemed to be so serious that the teacher has to be relieved from duty. O.C.G.A. § 20-2-940(g) requires a hearing within ten days whenever a teacher is temporarily relieved ‘from duty’. The section does not, by its terms, require relief from all duties” *Grigsby v. City of Atlanta Bd. of Educ.*, Case No. 1996-24 (Ga. SBE, Sep. 12, 1996), *aff’d*, *City of Atlanta Bd. of Educ. v. Grigsby*, Civil Action File No. E53247 (Fulton Sup. Ct., Apr. 2, 1997). It is immaterial whether the teacher was on leave with pay since the statute requires continued payment of all sums due until a decision is made. The Local Board also cannot avoid the requirements of O.C.G.A. § 20-2-940(g) by arguing that the action of relieving Appellant from her duties was taken by the principal rather than the Local Superintendent. There is no statutory provision that permits a principal to relieve a teacher of his or her duties; such action can only be taken by a superintendent. If a teacher is relieved from duty, the action necessarily is deemed to be the action of the superintendent.

In the instant case, however, Appellant failed to request a hearing when she was relieved of her duties and did not request a hearing until she was given notice that her contract would not be renewed because of several incidents that occurred throughout the school year. If a teacher fails to request a hearing when relieved from duty and waits until a hearing is conducted regarding the renewal of the teacher’s contract before raising the issue, the teacher is deemed to have waived the right to a hearing. *Lynn v. City of Atlanta Bd. of Educ.*, Case No. 1997-41 (Ga. SBE, Feb. 12, 1998). Appellant, therefore, waived her right to a hearing within the 10-working-day period provided for under O.C.G.A. § 20-2-940(g) and the hearing conducted was governed by the provisions of O.C.G.A. §

20-2-942(b). We conclude that Appellant was not denied any due process rights because a hearing was conducted more than ten working days after she was relieved from duty.

Appellant claims there was no evidence to support the charges of incompetence, insubordination, willful neglect of duty, and other good and sufficient cause. "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 were no findings of fact or conclusions regarding Appellant's guilt or innocence of any of the charges. The State Board of Education is placed in the position of having to speculate on what evidence the tribunal accepted and what it rejected. This situation, however, does not differ from the circumstances that exist when a local board makes a decision without making findings of fact, which are not required when a local board hears a case. *See, e.g., Snowberger v. Bacon Cnty. Bd. of Educ.*, Case No. 1993-17 (Ga. SBE, Jul. 8, 1993). Accordingly, there was testimony that throughout the year Appellant failed to assist in the preparation of lesson plans; in group planning meetings, Appellant proposed activities that did not relate to the subject matter and was confrontational when asked questions; Appellant would discipline children by shouting across the room at them; Appellant would arrive for class and not know what was supposed to be taught, although she had access to the lesson plans for the week, and Appellant began tape recording meetings with her co-workers and continued to record her meetings after her principal directed her not to record conversations without the consent of the co-worker or face charges of insubordination. There was, therefore, some evidence to support the charges.

Appellant claims that the Local Board's decision must be reversed because the tribunal failed to make findings of fact. O.C.G.A. § 20-2-940(f) provides that "[w]here the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the local board within five days of the conclusion of the hearing" In the instant case, contrary to the requirements of the statute, the tribunal did not make any findings of fact to support its recommendation, nor did the Local Board make any findings of fact.

Although the State Board of Education has regularly held that when a local board of education conducts a hearing there is no requirement for it to enter findings of fact, the statute is clear and mandatory, that when a tribunal sits "the tribunal shall file its findings and recommendations" O.C.G.A. § 20-2-940(f) (emphasis added). Although a local board of education is not required to make findings of fact when it conducts a hearing, the statute is mandatory in requiring findings to be made when the local board turns the matter over to a tribunal to hear. The failure of the tribunal to make findings of fact in the instant case results in a denial of procedural due process and requires vacation of the

Local Board's decision and remand for appropriate findings of fact. *See, Spivey et al. v. Mayson*, 124 Ga. App. 775; 186 S.E.2D 154 (1971).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board denied Appellant procedural due process because findings of fact were not made by either the tribunal or the Local Board. Accordingly, the appeal is remanded with direction that the Local Board vacate its decision and remand the case to the tribunal to enter appropriate findings of fact and to make a new recommendation and to enter a new decision thereon, after which the losing party shall be free to enter another appeal to the State Board of Education.

This _____ day of January 2010.

William Bradley Bryant
Vice Chairman for Appeals