STATE BOARD OF EDUCATION
STATE OF GEORGIA

DONALD HOBSON,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO. 2010-44**
	:	
ROCKDALE COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by Donald Hobson from a decision by the Rockdale County Board of Education ("Local Board") to terminate his employment contract on the grounds that he violated the Standards of The Code of Ethics for Educators by hitting a student on the head, and due to his classroom management. The Local Board concluded that Appellant's employment contract was properly terminated pursuant to O.C.G.A. § 20-2-940(a) on the grounds of incompetency, insubordination, and other good and sufficient cause.

Appellant asserts three errors on appeal: (1) the Local Board erred because Appellant was denied due process, (2) the Local Board erred because the decision is based upon evidence relating to a previous school year, and (3) the Local Board erred because the decision is not supported by the record. For the reasons set forth below, the decision of the Local Board is sustained.

I. PROCEDURAL BACKGROUND

On or about September 18, 2009, Appellant was notified that his annual contract for the 2009-2010 school year was being recommended for termination. Appellant was provided notice of the charges and a hearing date of September 28, 2009. Pursuant to O.C.G.A. § 20-2-940(g), Appellant was suspended with pay effective September 21, 2009, based upon the Superintendent's conclusion that Appellant's conduct was of such a serious nature and circumstances existed which would not permit Appellant to continue to perform his duties without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. By at least September 25, 2009, Appellant received the written notice of the charges and a hearing date of September 28, 2009. On September 28, 2009, the Local Board provided the Appellant a hearing with the opportunity to present evidence. Appellant chose not to attend the hearing because he did not believe he had sufficient time to prepare. Appellant did not request a continuance. After hearing the evidence, the Local Board terminated Appellant's

employment contract. Appellant has timely and properly appealed the decision of the Local Board to the State Board of Education ("State Board").[1]

II. FACTUAL BACKGROUND

Appellant was employed by the Local Board for the 2009-2010 school year as a teacher at the Alpha Academy. On or about September 2, 2009, a student alleged that Appellant struck him in the head. Appellant was placed on administrative leave with pay while the Local Board

[1] The Local Board contends that this appeal is not properly before the Board. First, the Local Board asserts that Appellant failed to file the transcript with his appeal. The Local Board cites O.C.G.A. § 20-2-1160(b), which states that "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." However, the remainder of O.C.G.A. § 20-2-1160(b) states that "within ten days [after the filing of the appeal] 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." It is impossible for an appealing party to file the transcript when a local board fails to meet its duty of preparing the certified record. Thus, it is clear from O.C.G.A. § 20-2-1160(b) that the local boards have the duty to prepare a certified copy for the appealing party to file and for the local board to transmit the certified record to the State Board. Any other reading of this statute would be absurd, as an appealing party does not control a local board's diligence in preparing the certified record. In fact, Appellant contends that he unsuccessfully attempted to obtain the transcript from the Local Board. O.C.G.A. § 20-2-1160(b) is silent on addressing this situation. O.C.G.A. § 20-2-1160(b) specifically provides the State Board with the authority to adopt regulations for proceedings before it. The State Board has done so by allowing "[t]he party making the appeal [to] file with the appeal the complete record, including a transcript of testimony certified as true and correct by the local school superintendent or [to] request that the superintendent transcribe and prepare such transcript." (emphasis added). Thus, the State Board rule is an authorized interpretation of the statutory scheme. See Moulder v. Bartow County Bd. of Educ., 267 Ga. App. 339, 347 (2004).

Furthermore, the Local Board asserts Board Rule 160-1-3-.04(e) is contrary to Georgia law because it states "[t]he appeal **may** be amended and a transcript filed any time prior to transmission to the state board." (emphasis added). Contrary to the Local Board's contention, Board Rule 160-1-3-.04(e) pertains to a local board's duty to transmit the certified record to the State Board in accordance with O.C.G.A. § 20-2-1160(b). O.C.G.A. § 20-2-1160(b) is again silent on allowing the record to be amended. Thus, Board Rule 160-1-3-.04(e) allows for the appeal to be amended and a transcript filed any time prior to transmission to the state board. The use of the word "may" instead of the word "shall," for the purpose of amending the record, does not change the statutory scheme. The State Board has properly exercised its rule-making authority to address this situation. Thus, the Local Board's assertions are without merit.

investigated the allegations. The Local Board concluded that Appellant had violated The Code of Ethics for Educators. At the hearing, the student testified that Appellant hit him in the head, which caused him pain. The Local Board also offered the videotape of the incident, which clearly shows Appellant striking the head of the student. The Local Board also offered evidence regarding Appellant's classroom management problems.

III. ERRORS ASSERTED ON APPEAL

A. Hearing Notice.

Appellant asserts that the Local Board violated his rights because he was not provided sufficient time to prepare for his hearing. Appellant did not seek a continuance or otherwise object to the scheduled hearing. Rather, Appellant chose not to appear. As an initial matter, this issue was not raised before the Local Board, and, therefore, it cannot be raised on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga . SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983). Even if this issue was properly before this Board, for the reasons set forth below, this assertion is without merit.

Pursuant to O.C.G.A. § 20-2-940(g), a local board may temporarily relieve a teacher from duty with pay based upon the conclusion that the charges were of "such seriousness or other circumstances exist which indicate that such teacher could not be permitted to continue to perform his duties without danger of disruption or other serious harm to the school, its mission, pupils, or personnel." Pursuant to O.C.G.A. § 20-2-940(g), a local board cannot temporarily relieve a teacher "in excess of ten working days," and is required to give Appellant notice of the hearing "at least three days prior to the hearing."

In this case, on September 18, 2009, the Local Board issued the written notice to Appellant and unsuccessfully attempted to hand-deliver it to him. Nevertheless, on September 25, 2008, three days before the hearing, Appellant received the written notice of the charges and hearing date through certified mail. Thus, Appellant was provided written notice and a hearing in accordance with O.C.G.A. § 20-2-940(g). Furthermore, Appellant failed to appear at the hearing to object to it, nor did he seek a continuance. Thus, Appellant waived his right to challenge the process afforded to him by the Local Board. For these reasons, the Local Board did not violate Appellant's rights under the Fair Dismissal Act.

B. Reliance on Evidence from the Prior Years.

Appellant contends that the Local Board erred by relying on events that had occurred during Appellant's prior contract years. Appellant relies upon Moulder v. Bartow County Bd. of Educ., 267 Ga. App. 339 (2004) in support of his position. In Moulder, the Georgia Court of Appeals upheld this Board's conclusion that a local board could not terminate an employee under the Fair Dismissal Act "based solely on events that occurred before the contract was issued." Id. at 343 (emphasis added). Moulder further upheld this Board's conclusion that prior incidents "can be presented for the purpose of establishing a course of conduct." Id. Thus, under Moulder, prior incidents cannot be used to support the decision of the Local Board, but can be presented to establish a course of conduct.

In this case, the Local Board's decision was based upon Appellant's conduct which occurred during the contract year. Specifically, Appellant's hitting a student on the head occurred during the contract year at issue. Thus, the Local Board's decision was not based solely on events that occurred before the contract was issued. Thus, this assertion is without merit.

C. Record Evidence.

The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). The Board finds that the record contains sufficient evidence showing that the Local Board's decision to terminate Appellant for incompetency, insubordination, and other good and sufficient cause under O.C.G.A. § 20-2-940(a) is supported by the record. See Brawner v. Marietta City Bd. of Educ., 285 Ga. App. 10, 646 S.E.2d 89 (2007); Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986); Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008).

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This _____ day of April 2010.

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WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS