

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

EHRLEE SMITH,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2011-22
	:	
BRANTLEY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Ehrlee Smith from a decision by the Brantley County Board of Education (“Local Board”) non-renewing his employment contract for the 2010-2011 school year due to incompetency, insubordination, willful neglect of duty, and other good and sufficient cause. Appellant asserts five errors by the Local Board on appeal: (1) Appellant was denied due process because he was not provided a hearing when he was suspended, (2) Appellant was denied due process because the charge letter did not provide a date and place for the hearing, (3) Appellant was denied due process because the charge letter did not sufficiently identify which witness would testify to each allegation, (4) Appellant was denied due process because the hearing notice letter was not sent certified mail or statutory overnight delivery, and (5) the decision of the Local Board is not supported by the record. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

Appellant was timely notified that his annual contract for the 2010-2011 school year was being recommended for non-renewal. Appellant appealed the non-renewal recommendation of his employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board non-renewed Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was employed by the Local Board since 2002. Since 2006, Appellant taught at Brantley County High School. For the 2009-2010 school year, the Appellant taught Economics. At the end of the 2009-2010 school year, the Local Board received information that Appellant made inappropriate sexual comments to female and male employees. While investigating the allegations, the Local Board discovered that Appellant had failed to provide proper instruction and grading to students in his classes.

At the hearing, the Local Board provided evidence from several students. One female student testified that Appellant stated to her, "I don't know if we can be in the same room alone, especially in the dark." Appellant later told the same student on her 18th birthday, now that she was eighteen (18), they could run away together. The student also testified that he called her princess despite her objection and then later started calling her queen.

Appellant whistled at female students and stated to at least two (2) female students that their "hair was too seductive." Appellant told another female student that her scrubs were seductive. Appellant also placed his arm around female students, grabbed the back of their necks, and reached to grab a female student's leg through a hole in her jeans. Student testimony also shows that Appellant would stand behind female students, which made them feel uncomfortable because it felt like he was looking down their shirts. One female student described Appellant's behavior as making her feel violated.

Another student testified that Appellant told her that he needed to come to her job at a restaurant and get drunk and take advantage of her. According to testimony from another student, Appellant was asked why he did not report dress code violations. In response, Appellant stated, "with legs like that I couldn't send you to the office."

Appellant also joked with a male student about being gay, and referring to the student as the "gay hobbit." The male student further testified that Appellant would tell him to "go see your gay friend James," referring to another teacher. Appellant also joked with the male student about "his penis being big", made comments about "girls' tits", and "getting drunk" and "doing things with them."

While investigating the sexual misconduct allegations, the Local Board learned that Appellant was not properly providing instruction and grading. According to students, Appellant would give a packet out each week and then give the students the answers to the worksheets. Once the worksheets were turned in, Appellant gave full credit for completing the assignment, regardless of whether the students provided correct answers. In addition, Appellant would review the test questions and answers the day before the test, and then give a test with the same questions the next day.

Appellant's grading practices also showed improper grading. The testimony at the hearing indicated that Appellant would award grades regardless of the actual grade, and also gave grades to students who had not taken the test. Worksheets that had been completed had not been graded, and worksheets that had been graded, did not have the grades entered into the grade book.

III. ERRORS ASSERTED ON APPEAL

A. Appellant's Suspension Claim.

Appellant contends that on May 13, 2010, the Superintendent told him he was not to go back to the classroom but to call him each morning for his assignment. Appellant continued to

be paid until the end of the school year. Appellant contends that the Superintendent's actions constitute a suspension under O.C.G.A. § 20-2-940(b), thereby entitling him to a hearing pursuant to O.C.G.A. § 20-2-940(g). However, as this Board has recently held, O.C.G.A. § 20-2-940(g) is not automatically triggered when a local Board suspends or places a teacher on leave with pay. See Forde v. Clayton County Bd. of Educ., Case No. 2010-52 (Ga. SBE, May 2010), affirmed Case No. 2010 CV 2788-5, Superior Court of Clayton County (Oct. 19, 2010), discretionary appeal denied, Georgia Court of Appeals, Application No. A11D0141 (Dec. 14, 2010). Thus, Appellant's assertion is without merit.

B. Charge Letter – Time and Place for a Hearing.

Appellant contends that the Local Board erred because the charge letter did not identify the time and place the hearing would be held, as required by O.C.G.A. § 20-2-940(b)(3). However, the charge letter identifies the place as “the offices of the Board, 272 School Circle, Nahunta, Georgia.” The charge letter then states that, “I will notify you of a date for that hearing.” Thus, the charge letter does not identify the specific time for the hearing as required by O.C.G.A. § 20-2-940(b)(3).

In response, the Local Board contends that while a date certain was not contained in the charge letter, that Appellant was given ten (10) days advance notice of the hearing date, and that this date was postponed at the request of Appellant's counsel due to his scheduling conflict. In addition, the Local Board contends that Appellant waived any challenges to the notice because, after the June 10, 2010 charge letter was sent, Appellant's counsel never raised any objection to the charge letter, despite the charge letter specifically advising Appellant to notify the Local Board immediately if Appellant contended that the letter did not comply with the Fair Dismissal Act. In response, Appellant contends that it is not his obligation to notify the Local Board of deficiencies in the notice, and that the failure of the Local Board prejudiced him because the delay in the hearing caused witnesses to be unavailable who may have otherwise been available. For the reasons set forth below, this Board finds that the Local Board failed to follow the clear language of the statute by not providing a time for the hearing. However, the Board further finds that Appellant waived any objection to the notice, and any error was harmless.

This Board finds that the notice is deficient because it does not identify the time for the hearing. However, O.C.G.A. § 20-2-940(b) does not provide a deadline for scheduling the hearing. Rather, O.C.G.A. § 20-2-940(b) requires that a teacher be given at least ten (10) days notice before the hearing. After receipt of the June 10th charge letter, Appellant failed to notify the Local Board of any deficiencies¹ in the charge letter. If Appellant believed that this deficiency was prejudicial to him, then he should have immediately notified the Local Board so that the Local Board could have cured any deficiency. Instead, Appellant waited over two (2)

¹ This Board is concerned that the Local Board failed to follow the clear language of the Fair Dismissal Act by not identifying the time for the hearing, and not sending the hearing notice by certified mail or statutory overnight delivery. However, the ultimate purpose of the Fair Dismissal Act is to ensure that teachers are provided a fair hearing. This Board finds that none of the issues identified by Appellant deprived Appellant from a fair hearing.

months, until August 21, 2010, hearing to do so. This Board finds that Appellant waived any objection to this deficiency in the notice.

Furthermore, Appellant has failed to show how he was prejudiced by the failure of the Local Board to identify a time for the hearing in the charge letter. See Evans v. Jefferson County Bd. of Educ., Case No. 2010-01 (Ga. SBE, Oct, 2009) (upholding decision of local board despite failure to comply with Fair Dismissal provision where error did not prejudice teacher to a fair hearing). Appellant only contends that the hearing was delayed and that witnesses were not available because some of the students were no longer enrolled in school with the Local Board. However, Appellant failed to make an offer of proof of the content and nature of the potential evidence from other students that would dispute the evidence offered by the Local Board. Thus, this Board concludes that this deficiency in the charge letter was not prejudicial to Appellant.

C. Charge Letter – Identity of Witnesses.

Appellant further contends that the Local Board erred because the charge letter did not sufficiently identify the witnesses and the testimony of each witness, as required by O.C.G.A. § 20-2-940(b)(2). However, the charge letter identifies the witnesses and specifically describes the allegations against Appellant. Appellant asserts that the charge letter did not indicate which witness would testify to each allegation. However, O.C.G.A. § 20-2-940(b)(2) only requires the Local Board to provide the names of the witnesses and a concise summary of the evidence.² The Local Board's charge letter provides this information.

Furthermore, as set forth above, if Appellant believed that this deficiency was prejudicial to him, and prevented him from providing a defense, then he should have immediately notified the Local Board so that the Local Board could have cured any deficiency. Instead, Appellant waited over two (2) months, until August 21, 2010 hearing, to do so. This Board finds that Appellant waived any objection to this deficiency in the notice, and that any alleged deficiency was not prejudicial to Appellant.

D. Charge Letter – Certified Mail or Overnight Delivery.

Appellant further contends that the Local Board erred because the letter notifying him of the hearing date was not sent by certified mail or statutory overnight delivery, as required by O.C.G.A. § 20-2-940(c). This Board finds that the notice is deficient because it was not sent by certified mail or statutory overnight delivery. Absent proof of a written stipulation for Appellant

² Appellant cites Johnson v. Pulaski County Bd. Of Educ., Case No. 1996-44 (Ga. SBE, Nov. 1996) in support of his position. However, in Johnson, the local board provided very broad allegations without identifying specific allegations. In doing so, the local board also offered evidence that was beyond the broad summary contained in the charge letter. In this case, the Local Board provided specific allegations and identified the witnesses. While the summary did not identify which witness would testify to each allegation, Appellant was provided sufficient information to form a defense. Based upon the allegations, Appellant should have reasonably understood the specific allegations and the potential testimony of the witnesses. Moreover, Appellant did not object on the grounds that the Local Board's evidence exceeded the scope of the charges. Thus, this Board finds Johnson distinguishable from this case.

to do otherwise, once the hearing date was scheduled, and after the hearing was continued, the Local Board was not relieved of its duty to properly serve any further notices in accordance with O.C.G.A. § 20-2-940(c). O.C.G.A. § 20-2-940(c) provides that “[a]ll notices required by this part . . . shall be served by certified mail or statutory overnight delivery.” While this provision does not address circumstances in which the charge letter does not contain a hearing date or when a hearing is continued, its purpose is to ensure the existence of proof that written notice of the hearing date was sent to a teacher.

However, in this case, it is undisputed that Appellant appeared at the hearing. It is undisputed that after receipt of the June 10th charge letter, Appellant failed to notify the Local Board of this deficiency in the notice letter. Again, if Appellant believed that this deficiency was prejudicial to him, then he should have immediately notified the Local Board so that the Local Board could have cured any deficiency. Appellant failed to do so until the August 21, 2010 hearing. Thus, this Board finds that Appellant waived any objection to the deficiency in the notice. Furthermore, Appellant has failed to show how he was prejudiced by the failure of the Local Board to send the charge letter by certified mail or statutory overnight delivery. Since Appellant clearly received the notice and appeared at the hearing, this Board concludes that this deficiency in the charge letter was not prejudicial to Appellant.

E. The Record Evidence.

This 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). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

In this case, the Local Board provided evidence from several students regarding inappropriate sexual comments to students, and the deficiencies in Appellant’s classroom instruction and grading. At the hearing, one female student testified that Appellant stated to her, “I don’t know if we can be in the same room alone, especially in the dark.” Appellant later told the same student on her 18th birthday, now that she was eighteen (18), they could run away together. The student also testified that he called her princess despite her objection and then later started calling her queen.

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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 January, 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS