

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES N. HUBER,	:	
Appellant,	:	
v.	:	CASE NO. 1983-12
DOUGHERTY COUNTY BOARD	:	
OF EDUCATION,	:	
Appellee.	:	

O R D E R

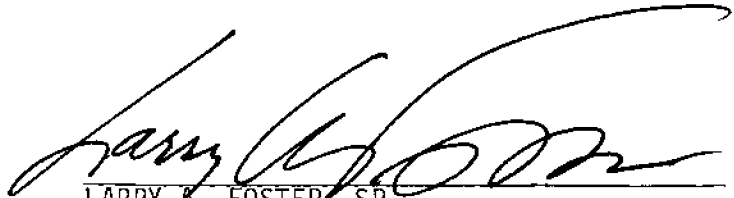
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Dougherty County Board of Education herein appealed from is hereby reversed.

Mrs. Bernadine Cantrell was not present.

This 14th day of July, 1983.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

FILED 5 1983

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JAMES N. HUBER,)	
)	
Appellant,)	CASE NO. 1983-12
)	
v.)	
)	
DOUGHERTY COUNTY BOARD)	
OF EDUCATION,)	REPORT OF
)	HEARING OFFICER
Appellee.)	

PART I

SUMMARY OF APPEAL

This is an appeal by James N. Huber (hereinafter "Appellant") from a decision by the Dougherty County Board of Education (hereinafter "Local Board") to dismiss Appellant after the Local Board's finding of incompetence, willful neglect of duty, and other good and sufficient causes based upon charges that Appellant physically mistreated a minor female student. The appeal is based upon Appellant's claims that the Local Board committed errors in the conduct of the hearing and in making the decision to terminate him, and that the evidence does not support the decision. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On February 22, 1982, Appellant was coaching an eighth grade physical education class. A fight broke out between

two of the students he was coaching. One of the students was a boy and the other a girl. Appellant blew his whistle to obtain their attention and told the students to stop, but they continued to fight. Appellant stepped between the students and the boy withdrew from the fight, but the girl continued her aggressive actions. Flailing her arms, she continued after the boy, but struck Appellant on the chest and in the face. Appellant continued to tell her to stop, but she would not. After being struck, Appellant grasped the girl's arms, placed his leg behind her, and forced her to the floor while he held her arms. After getting her to the floor, Appellant asked her if she was ready to stop fighting and she agreed to stop and go to the principal's office. Appellant then released her from the floor and pulled her to her feet. The girl then struck Appellant again on his chest. Appellant backed away and fully extended his leg in front of himself to keep the girl away. The girl stopped and Appellant then pushed her with his foot towards the principal's office. The girl was not injured in any way and all of Appellant's actions were of a defensive nature with the intent of keeping the students from fighting.

Appellant took the other student to the principal's office and the girl was already there. The principal told Appellant to leave the office. The next day, Appellant was called to the principal's office where he was confronted by the principal and the girl's mother. When the parent became upset, Appellant withdrew from the office. He was called back later that day.

and given notice that he was suspended for two and one-half days. Appellant accepted the disciplinary action without appealing to the Local Board.

After he returned to school, Appellant was notified on March 1, 1983, that he was to be dismissed on charges of incompetence, willful neglect of duty, and other good and sufficient causes because he had physically mistreated the girl. The notice also stated that Appellant could have a hearing before the Local Board on the charges. The hearing before the Local Board was held on March 11, 1983. At the conclusion of the hearing, the Local Board voted to dismiss Appellant.

Appellant was notified of the Local Board's decision on March 15, 1983. He filed his appeal to the State Board of Education on April 14, 1983.

PART III

CONCLUSIONS OF LAW

On appeal, Appellant claims he was denied due process because (1) the Local Board failed to make any findings of fact; (2) he was subjected to double jeopardy because he had already been punished by the suspension; (3) his actions were reasonable; (4) the Local Board failed to address the issues of defense and lack of intent; (5) there was no reason for the severity of the punishment given by the Local Board; (6) there was no evidence Appellant violated any standards of conduct and no evidence of what conduct Appellant should have exhibited; (7) the Local Board considered evidence which was not presented at the hearing,

to other teachers in similar circumstances.

Appellant claims he was denied due process because the Local Board did not make any findings of fact. The State Board of Education has previously held that a local board of education does not need to make findings of fact when it makes a decision regarding the dismissal of a teacher or other employee. Kelson v. The Board of Public Education for the City of Savannah and the County of Chatham, Case No. 1982-17.

Appellant claims the previous decisions of the State Board of Education are inapplicable because, in the instant case, Appellant was subjected to a lesser disciplinary measure by the Superintendent and, when a reviewing body imposes more stringent punishment, it is necessary for the reviewing body to make findings of fact. Appellant cites the case of Georgia Real Estate Commission v. Horne, 141 Ga. App. 226, as authority for his position. The Horne case, however, was based upon a statutory requirement that does not exist with respect to decisions by local boards of education. The Hearing Officer, therefore, concludes that the decision of the Local Board did not require any findings of fact under the decisions of the State Board of Education.

Appellant claims he was denied due process because he was subjected to double jeopardy in that he was previously disciplined by the superintendent who imposed a two and one-half day suspension. There is, however, no evidence in the record that the Local Board was aware of the superintendent's actions. The Local Board is charged with the responsibility of managing

the local schools and with disciplining the teachers under its control. This authority cannot be taken away by the superintendent. As indicated in the case of Moore v. Bibb County Board of Ed., Case No. 1981-43, the Local Board was not estopped to impose disciplinary sanctions when it was unaware of the sanctions imposed by the superintendent and did not approve the sanctions. Additionally, Appellant did not raise the issue of double jeopardy during the hearing before the Local Board. Although it was mentioned that he had been previously disciplined, no motion was made to dismiss the proceedings before the Local Board because of the previous disciplinary action. An issue cannot first be raised on appeal to the State Board of Education. The Hearing Officer, therefore, concludes that Appellant's due process rights were not violated because he was subjected to disciplinary action by the superintendent prior to the hearing before the Local Board.

Appellant also complains that the Local Board made its decision based upon evidence received outside the hearing. This allegation is based upon Appellant's argument that the questions asked by the Local Board members shows they had outside knowledge. Appellant, however, did not object or raise any question during the hearing about the questioning by the Local Board members. As stated above, an issue cannot be first raised on appeal. Since Appellant did not make any motion concerning the questions by the Local Board members, he is deemed to have consented to the questioning and the proceedings. There was no evidence contained in the record that the

Board members had evidence which they received outside the hearing. and (8) the punishment was inconsistent with the punishment given. The Hearing Officer, therefore, concludes that Appellant's complaint that the Local Board members based their decision upon evidence outside the record cannot be initially raised on appeal and, therefore, cannot serve as a basis for setting aside the decision of the Local Board.

Appellant's argument that his punishment is inconsistent with the punishment given to other similarly situated teachers is not supported by the record. Appellant argues that he could not place the issue into the record because his fate had not been decided until after the hearing. The State Board of Education, however, must limit its review to the record of the hearing conducted by the Local Board. If there has been discrimination in the disciplinary measures imposed by the Local Board, Appellant will have to raise the issue in another forum.

Appellant claims that the evidence submitted before the Local Board did not support the Local Board's decision. A local board of education has the burden of proving the charges brought against a teacher. O.C.G.A. § 20-2-940(e)(4). The State Board of Education follows the rule that if there is any evidence to support the decision of a local board of education, then the decision will not be disturbed upon review. The Hearing Officer, however, concludes that there is no credible evidence in the record which shows that Appellant physically mistreated the student. The evidence shows that Appellant was

confronted with a student whose actions were bordering on the hysterical, that the student failed to respond to his commands and struck him three times. Appellant subdued the student by forcing her to the floor, but there was no evidence that Appellant's actions in placing her on the floor was improperly done, or that he used any unusual force, or that the student was in any way injured or improperly treated. There was also no evidence that Appellant used any force when he nudged the student towards the principal's office with his foot when his leg was fully extended in front of him. The testimony of another teacher who witnessed the incident shows that the teacher did not see Appellant "kick" the student, but rather he pushed her with his foot and the teacher was not aware of the force behind the push. The student was not injured by the push, and there was no evidence that the push in any way was "mistreatment" of the girl.


Appellant, by virtue of his position, was charged with the responsibility of maintaining order and attempting to avoid injury to any of the students under his charge. In all of his actions, Appellant attempted to maintain order, protect the other student and himself from injury, and protect the girl from being injured by any of his actions. Appellant's actions were progressive in that he initially commanded the students to stop. This was unsuccessful, so he forced himself between the students. This was also unsuccessful and he was struck twice. Only then did Appellant decide that physical restraint was required. The actions taken by Appellant were

reasonable in light of the circumstances he faced and consistent with his responsibilities. The Hearing Officer, therefore, concludes that there was no evidence showing that Appellant physically mistreated the student.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local Board failed to establish that Appellant physically mistreated the female student when he attempted to quell her violent outburst and protect the other student and himself from her flailing actions. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.



L. O. BUCKLAND
Hearing Officer