

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**MARTHA PETTIFORD,**

)

**Appellant,**

)

)

**v.**

)

**CASE NO. 1984-17**

)

**TIFT COUNTY BOARD  
OF EDUCATION,**

)

)

**Appellee.**

)

)

**ORDER**

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 appeal is hereby dismissed. This 14th day of March, 1985.

**LARRY A. FOSTER, SR.**  
Vice Chairman for Appeals

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>MARTHA P., a/n/f of</b>	)	
<b>C. L. P., a minor student</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 1984-17</b>
	)	
<b>TIFT COUNTY BOARD</b>	)	
<b>OF EDUCATION,</b>	)	
	)	
<b>Appellee.</b>	)	<b>REPORT OF</b>
	)	<b>STATE HEARING OFFICER</b>

**PART I**

**SUMMARY OF APPEAL**

This is an appeal from a decision of the Tift County Board of Education (hereinafter "Local Board") to expel C.L.P. (hereinafter "Student") for the remainder of the 1984-85 school year for striking the principal at each of two schools she attended. The Student's mother represented the Student on appeal and contends that the actions of the Student were the fault of a teacher who did not believe what the Student told the teacher, and that the expulsion was too harsh a punishment. The Local Board contends the appeal should be dismissed as improperly filed and that it had no choice but to expel the student because other attempted discipline had failed. The Hearing Officer recommends that the appeal be dismissed as improperly filed.

**PART II**

**FACTUAL BACKGROUND**

The Student was a fourth grade student at Northside Elementary School when she was involved in an incident which resulted in her striking the principal. The principal sent the

Student home and recommended the Student be placed in the off-campus center pending professional counseling. the Student's mother refused to have the Student placed in the off campus center and refused the recommendation for professional counseling of the Student. The Student was then placed in a fourth grade class at Annie Bell Clark Elementary School. At that school, she refused to enter the classroom she was assigned to and also refused the principal's order to go into another room. When she refused, the principal put his hand on her and she slapped him and began to fight him. Appellant alleges that the reason the Student was obstinate was because she had a phobia about entering the room as she had seen two students in the room previously get sick. The principal filed a complaint as required under O.C.G.A. § 20-2-753(b) and a hearing was held by a disciplinary hearing officer appointed by the Local Board. The Disciplinary Hearing Officer recommended the Student be expelled for the remainder of the 1984 -85 school year in a decision issued October 29, 1984. The parent appealed that decision to the Local Board. The Local Board heard the appeal November 13, 1984 and issued a decision sustaining the Disciplinary Hearing Officer's decision to expel the Student the State Department of Education requesting an appeal November 17, 1984. The State Department of Education notified the Local School Superintendent of the appeal request by letter dated November 27, 1984, and received the record by cover letter dated December 5, 1984.

The Local Board moved to dismiss the appeal based on Appellant's failure to abide by the proper procedure under O.C.G.A. § 20-2-1160(b) because the Appellant failed to file the appeal with the Local Superintendent.

### PART III

### DISCUSSION

O.C.G.A. § 20-2-1160(b) provides:

Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. The appeal shall be in writing and shall distinctly set forth the question in

dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and 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. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter 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. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

While the language of the statute is that the appeal shall be filed with the superintendent, and does not specify whether it should be filed with the local or state superintendent, it is clear that it is intended that the filing be with the local superintendent. The requirement that it be filed with the superintendent comes immediately after the sentence which requires that the party filing the appeal also file a transcript certified as true and correct by the local school superintendent. The State Superintendent is not mentioned until subsection (c) of the statute concerning appeals to Superior Court from decisions of the State Board of Education. Also, the statute makes it the duty of the superintendent to transmit, within ten days after the filing of the appeal, a copy of the appeal together with the transcript of the 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 clear that only the local superintendent would have access to these documents at that point in the proceedings. Thus, the Hearing Officer is of the opinion that the statute requires an appeal to the State Board to be filed with the local superintendent.

A similar case has occurred in which a teacher who was dismissed from her position by a local board of education filed an appeal from a decision of the State Board of Education in Superior Court rather than filing the notice of appeal with the State Superintendent. *Cooper v. Gwinnett Co. Bd. of Ed.*, 57 Ga. App. 289 (1981). In that case, the Georgia Court of Appeals affirmed the decision of the Superior Court to dismiss the appeal because of failure of the Appellant to first file an appeal with the State Board of Education. Though the result may seem harsh, it appears clear that the instant case should be treated in the same

manner. The appeal should be dismissed for failure to comply with the statutory prerequisites to filing the appeal.

In the event that the appeal is not dismissed, the decision of the Local Board to expel the Student is supported by evidence of misconduct on the part of the Student in that two principals testified the Student struck them. This was not denied by the Student. While expulsion is a harsh punishment, it is clearly a matter within the discretion of the Local Board and cannot be overturned on appeal absent a finding that the Local Board has abused its discretion. No precedent has been cited for showing that expulsion of a fourth grader is an abuse of discretion and the decision of the Local Board must stand.

#### PART IV

#### CONCLUSION

Based upon the record presented and the foregoing discussion, the Hearing Officer is of the opinion that the appeal was improperly filed and therefore the appeal should be dismissed and that even if the appeal were not dismissed, there is evidence in the record to support the decision of the Local Board and no evidence was presented showing the Local Board abused its discretion. The Hearing Officer, therefore, recommends that the decision of the Local Board be

AFFIRMED.

L. O. BUCKLAND  
State Hearing Officer