STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVE TAYLOR,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1992-1**
v.	:	
	:	**DECISION**
BROOKS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Dave Taylor ("Appellant") from a decision by the Brooks County Board of Education ("Local Board") to uphold a letter of reprimand issued by the Local Superintendent to Appellant. Appellant maintains that there was insufficient evidence to sustain the Local Board's decision. The Local Boards decision is sustained.

On January 14, 1991, the Local Board conducted a hearing on the termination of Appellant's teaching contract based upon charges of inappropriate conduct in rubbing the backs of his fifth grade students. At the conclusion of the hearing, the Local Board decided there was insufficient evidence to terminate Appellant's contract. The Local Board, nevertheless, found that Appellant had failed to comply with a directive not to touch any of the children in his class. The Local Board directed the Local Superintendent to issue a letter of reprimand to Appellant. On January 17, 1991, the Local Superintendent wrote a letter of reprimand to Appellant. The letter of reprimand directed Appellant not to touch his students in any manner that could be considered improper.

On October 8, 1991, Appellant wrote to the members of the Local Board and requested an opportunity to discuss the letter of reprimand. The Local Board treated the letter as a request for an out-of-time appeal concerning the issuance of the letter of reprimand. On October 23, 1991, the Local Board notified Appellant that it would hear Appellant's appeal on October 29, 1991. Following the hearing, the Local Board upheld the Local Superintendent's issuance of the letter of reprimand. Appellant then filed a timely appeal to the State Board of Education.

On appeal, Appellant maintains that there was no evidence to support the Local Board's decision. Additionally, Appellant claims that he was denied due process because the Local Board gave him insufficient notice of the hearing and refused to grant him a continuance when he requested it at the beginning of the hearing.

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 Ed. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Ed. of Educ., Case No. 1976-11 (St. Bd. of Ed., 1976). During the hearing, Appellant testified that before October 10, 1991, he rubbed the backs of his fifth grade students to encourage them. On October 10, 1991, Appellant's principal told him to stop touching the students. Appellant testified that he did not touch any of the students after the principal warned him. The Local Superintendent testified that he was informed that Appellant touched some students after October 10, 1991. As a result, the Local Superintendent conducted an investigation and decided to terminate Appellant's contract. The January 14, 1991, hearing followed.

The essence of Appellant's appeal is a collateral attack on the Local Board's January 14, 1991, decision that directed the Local Superintendent to issue a letter of reprimand. Appellant, however, cannot contest the January 14, 1991, decision because the appeal was filed more than thirty days after January 14, 1991. O.C.G.A. § 20-2-1160(b) (appeals must be filed "within 30 days of the decision of the local board....").

O.C.G.A. § 20-2-944 provides that a local superintendent can place a letter of reprimand in an employees permanent personnel file and the employee can appeal the decision of the local superintendent to the local board of education. The local board then has the right to either affirm or reverse the local superintendent's decision. There are no time limits on when an employee has to file an appeal to the local board.

In the normal case, the local superintendent first issues a letter of reprimand and then the local board conducts a hearing on whether the letter of reprimand is justified. In this case, however, the Local Board held the hearing, found the justification, and directed the Local Superintendent to issue the letter. Since the justification was already the subject matter of a hearing, proof of further justification is unnecessary in the absence of a timely appeal.

The letter issued by the Local Superintendent directs Appellant not to improperly touch any of his students. Appellant admitted at the October 29, 1991, hearing that he rubbed the backs of his students. This was sufficient evidence for the Local Board to decide that the contents of the Local Superintendent's letter were proper even if Appellant did not touch his students after he was warned by his principal.

The Local Superintendent's letter states:

Dear Mr. Taylor: The Brooks County Board of Education on January 14, 1991, instructed me in your presence to write you a letter of reprimand. In our conference at Morven Elementary on January the 16th, 1991, I feel confident that I made myself clear to you about not touching children in any way which would be considered improper touching. I feel very good about your comments in that conference which affirmed that you would not touch students improperly in the future nor would you do anything or say anything that could be considered to be improper or in poor taste This letter will document our conference and will fulfill the request of the Board. The Brooks County Board of Education and/or I will not tolerate any improper touching of students in the future. Our hope for you is that you exercise good judgment in all of your interactions with students and that you demonstrate the professional qualities which we are sure that you possess. Sincerely, John R. Horton.

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to support the Local Board's decision not to remove the letter of reprimand from Appellant's permanent personnel file. The Local Board's decision, therefore, is

SUSTAINED.

This 14th day of May, 1992.

Mr. Brinson and Mr. Sears were absent.

James H. Blanchard
Vice Chairman for Appeals