STATE BOARD OF EDUCATION

STATE OF GEORGIA

SUSAN BEAN,	:	
	:	
Appellant,	:	
v.	:	
	:	**CASE NO. 1992-4**
	:	
CLAYTON COUNTY	:	**DECISION**
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Susan Bean ("Appellant") from a decision by the Clayton County Board of Education ("Local Board") to uphold the Local Superintendent's decision on three grievances filed by Appellant to contest the selection of her assistance principal as her evaluator and the grievance procedures followed by the school system. The decision of the Local Board is sustained.

The appeal challenges the grievance procedures adopted by the Local Board pursuant to State Board of Education Rule No. 160-1-3-.01, which requires local boards of education to establish grievance procedures to "resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings. Both the Local Board's policy, Policy GAE(2), and the State Board of Education policy provide for hearings at different levels, beginning with the grievant's immediate supervisor.

During 1991, Appellant served as a Georgia Association of Educators representative at Riverdale Senior High School where she was employed as a teacher. In her representative capacity, Appellant assisted another teacher in a federal civil suit against Ed Scott, the principal at Riverdale Senior High School, Mr. Scott was charged with harassment of the teacher. The jury returned a judgment against Mr. Scott. Appellant also filed a complaint with the Office of Civil Rights alleging that Mr. Scott retaliated against her because of her assistance in the civil suit.

Appellant filed the first grievance to challenge the selection of Glenice Graves, the assistant principal, as her evaluator under the Georgia Teacher Evaluation Instrument ("GTEI"). Appellant contended that Ms. Graves was biased because she was under the direct supervision of Mr. Scott, the principal, and thus subject to the influence of Mr. Scott. Appellant contended that because Ms. Graves was subject to Mr. Scott's influence, Ms. Graves would be unable to give an objective evaluation. When the first level administrator heard the first grievance, Ms. Graves was called as a witness. The first level administrator found that there was no evidence that Ms. Graves was incapable of evaluating Appellant fairly and there was no evidence that Mr. Scott violated the intent and purpose of GTEI by assigning a subordinate to evaluate Appellant. Appellant filed an appeal from the decision. She also filed a second grievance that Ms. Graves

was improperly called as a witness in violation of State Board of Education Policy 160-1-3-.O1(5)(e), which limits the participants in a grievance hearing.

Mr. Eddie J. White, Assistant Superintendent for Staff/Pupil Services, conducted a level two hearing on the first grievance. Mr. White concluded that there was no evidence that Ms. Graves could not provide a fair evaluation on the Georgia Teacher Observation Instrument. He also concluded that the principal acted within his authority in assigning Ms. Graves as Appellant's evaluator.

Mr. White also conducted the level one hearing on the second grievance. He concluded that the level one hearing on the first grievance did not violate Policy GAE(2) when the hearing officer called Ms. Graves as a witness. Mr. White also concluded that there was no conflict between Local Board Policy GAE(2) and State Board of Education Policy 160-1-3-. 01.

Following Mr. Whites decisions, Appellant appealed the level two, first grievance decision and the level one, second grievance decision. In addition, Appellant filed a third grievance in which she complained that Mr. White improperly interpreted Local Board Policy GAE(2) and that Local Board Policy GAE(2) did not conform to State Board Policy 160-1-3-. 01. A level two hearing on the second grievance was decided adversely to Appellant. All three grievances were then consolidated and presented to the Local Board.

On December 9, 1991, the Local Board conducted a hearing on the three grievances. The Local Board met in executive session following the hearing, but did not announce any findings. Instead, the Local Board Chairman told Appellant that "we will write down the determination of our findings tonight and we will mail that to you within the allotted time frame."

Two days after the hearing, on December 11, 1991, a petition in support of the principal, Ed Scott, was delivered to the Local Board and the Local Superintendent. The petition was signed by 92 employees of Riverdale High School. Among other comments, the petition stated:

> We support and appreciate a man of Mr. Scott's caliber as the leader of our school. We also regret that, while trying to do a competent job, he has had to endure the attacks and criticisms of a few people since he has held the office.
>
> We, the staff and faculty of Riverdale High School, feel that we can no longer stand by silently while our leader is being publicly humiliated and defamed. This letter is to express our support and appreciation of him as the principal of Riverdale High School.

Glenice Graves, the assistant principal, was involved in some manner with distributing the petition. On December 16, 1991, the Local Board notified Appellant that it had decided to deny all of her grievances.

On January 6, 1992, Appellant filed an appeal with the State Board of Education. On January 15, 1992, Appellant filed a motion for reconsideration with the Local Board based upon the ex parte communication filed with the Local Board before it reached its decision. The Local Board denied the motion for reconsideration. The Local Board Chairman wrote to Appellant that

the Local Board reached its decision of December 9, 1991, before the petition was delivered to the Local Board.

On appeal, Appellant claims that the Local Board erred in not granting her motion for reconsideration. Additionally, she claims that the Local Board erred in deciding against her because she is entitled to an unbiased evaluation. She also claims that the Local Board's Policy GAE(2) is contrary to State Board Policy 160-1-3-.01 and violates her due process rights. These claims are discussed below in reverse order.

A comparison of GAE(2) and Rule 160-1-3-.01 shows that the Local Board policy follows the State Board policy.

State Board Policy 160-1-3-.01(5) states:

> (d) A statement that the complainant shall be entitled to an opportunity to be heard, to present relevant evidence and to examine witnesses at the appropriate level as determined by the local unit of administration policy.

Local Board Policy GAE(2) provides:

> 5. First Level; Filina; Hearing: Decision:
>
> The Complainant shall be afforded an opportunity at the hearing to be heard, to present relevant evidence, and to examine witnesses giving testimony where practicable.

State Board Policy 160-1-3-.0l(5) states:

> (e) A provision whereby the complainant is entitled to the presence of an individual of his or her choice to assist in the presentation of the complaint at the central office administrator or local unit of administration level. The policy shall also include a provision whereby the presence of any individual other than the complainant and the administrator at any lower level is specifically prohibited. At the local unit of administration level nothing shall prevent the local unit from having an attorney present to serve as the law officer who shall rule on issues of law and who shall not participate in the presentation of the case for the administrator or the complainant.

Local Board Policy GAE(2) provides:

> 9. Legal and Other Representation
>
> The complainant is entitled to the presence of an individual of his or her choice to assist in the presentation of the complaint at the second and third levels. At the first level the presence of any individual other than the complainant and the administrator is specifically prohibited. At the Board of Education level, the board may choose to have an attorney present to serve as the law officer who shall rule on issues of law, but who shall not participate in the presentation of the case for the administrator nor the complainant.

State Board Policy 160-1-3-.01(5) states:

> (g) A statement that the complainant cannot present additional evidence at each level of the complaint process, unless it is determined by the administrator presiding over the complaint that such evidence is relevant to the issues presented at the initial hearing and such evidence was either not made available by the administration or not discoverable by the complainant. Any time a complainant is permitted to present additional evidence that was not presented at any prior level and it is determined that such evidence might have produced a different decision on the complaint, then the complaint may be remanded to the previous level with 10 calendar days allowed for reconsideration. The board of the local unit of administration, when hearing an appeal from a prior complaint level, shall be entitled to hear the complaint de novo.

Local Board Policy GAE(2) provides:

> 10. De Novo Determination: New Evidence:
>
> A determination of a complaint made at the lower level shall be considered on appeal, but the complaint, nevertheless, shall be determined by the rendition of a decision thereon which the Superintendent or local board (as the case may be) would have rendered had the matter been presented to that level at the outset; provided, however, the Complainant cannot present additional evidence at any level after the first level, unless:
>
> (a) It is determined by the Administrator presiding over the complaint that such evidence is relevant to the issues presented at the initial hearing and such evidence was either not made available by the administration or not discoverable by the Complainant, or
>
> (b) Where the local board notifies the Complainant at least five (5) calendar days prior to the hearing that it will hear the evidence on the complaint anew.

The provisions of the Local Board policy and the State Board policy are virtually identical in all important respects. We, therefore, can only conclude that the Local Board policy does not conflict with State Board policy.

Appellant argues that both policies limit the first level hearing to a meeting between the complainant and the complainant's immediate supervisor. In support of this argument, Appellant points to the language in Rule 160-1-3-.01(5)(e) and Local Board Policy GAE(2) 9 that state:

> ... the presence of any individual other than the complainant and the administrator ... is specifically prohibited.

The above language, however, must be read in connection with the provisions of subsection (d) of Rule 160-1-3-.01(5) which provides:

> ... the complainant shall be entitled to an opportunity to be heard, to present relevant evidence and to examine witnesses at the appropriate level as determined by the local board of administration policy. [emphasis added].

See also, Policy GAE(2) 5. The State Board policy thus contemplates that witnesses may be called at any level. The provision that bars any individual other than the complainant and the administrator is addressed to avoiding third party representation for either the complainant or the school system. This follows the stated purpose of the policy "to resolve problems at the lowest possible organizational level with a minimum of conflict and formal proceedings ...." Rule 160-1-3- .01(2)(a).

Appellant may be correct in her argument that by limiting the introduction of evidence to the level one hearing and excluding any legal representation causes the first level hearing to be confrontational. Nevertheless, Rule 160-1-3-.01 permits the limiting of evidence, and both Rule 160-1-3-.01 and Policy GAE(2) permit additional evidence if the evidence was unavailable at the first hearing.

We conclude that Local Board Policy GAE(2) conforms to Rule 160-1-3-. 01. We also conclude that the first level administrator for Appellant's first grievance did not err in calling a witness.

Appellant's original grievance involves an administrative decision that the State Board of Education will defer to the Local Board. School law and State Board of Education policy do not dictate who must conduct the GTEI evaluation. In the interest of maintaining employee morale, a school administration may want to consider different evaluators in circumstances such as this, but such consideration is not required. The State Board of Education concludes that the Local Board acted within its authority in affirming the choice of Ms. Graves as Appellant's evaluator.

Appellant also appeals the Local Board's failure to grant her motion for reconsideration. The motion for reconsideration was filed after Appellant filed her appeal with the State Board of Education. Under these circumstances, the Local Board did not improperly deny Appellant ' s request.

Based upon the foregoing, the State Board of Education is of the opinion that Local Board Policy GAE(2) follows State Board of Education Rule 160-l-3-.01, that no error was committed by calling a witness at the first level hearing on Appellant's grievance, and the Local Board acted within its discretion in affirming the selection of an evaluator and in denying Appellant's motion for reconsideration. The Local Board's decision, therefore, is

AFFIRMED.

This 14th day of May, 1992.

Mr. Brinson and Mr. Sears were not present.

James H. Blanchard
Vice Chairman for Appeals