STATE BOARD OF EDUCATION

STATE OF GEORGIA

LARRY S. BURRIS,	:	
	:	
Appellant,	:	
v.	:	**CASE NO. 1992-22**
	:	
HABERSHAM COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
Appellee.	:	
	:	

PART I

SUMMARY

This is an appeal by Larry S. Burns ("Appellant") from a decision by the Habersham County Board of Education ("Local Board") to terminate his contract as assistant principal at South Habersham Middle School. The decision of the Local Board is sustained.

PART II

FACTUAL SUMMARY

On April 10, 1992, Appellant was suspended from work based upon charges of "sexual misconduct with a female student; allegations of inappropriate physical contact with female students; possible battery upon a female student; insubordination; unprofessional conduct tending to undermine the educational mission of the school; and immorality." These charges were later amended to add "failure to complete assigned tasks; failure to properly enforce school rules and mete out discipline." A hearing before the Local Board was scheduled for April 29, 1992. A hearing was held before the Local Board on May 13, 14, 15, 18, 20, and 21, 1992. At the conclusion of the hearing on May 21, 1992, the Local Board voted and orally announced its decision to terminate Appellant's contract "based upon the evidence." The Local Board notified Appellant in writing of its decision by certified mail on June 22, 1992. The Local Board did not make any findings of fact or conclusions of law.

On March 11, 1992, three teachers from South Habersham Middle School reported to the Principal of South Habersham Middle School that they had concerns about Appellant's "actions with female students." They complained that Appellant hugged the girls, talked with them, and did not discipline them when they were talking loud. Later that day, the Principal and the Local Superintendent met with Appellant and discussed the teachers' complaints. The Local

Superintendent and the Principal advised Appellant that physical contact "must be discouraged" and that Appellant should "avoid becoming involved in situations which may give rise to gossip." The results of the meeting were set forth in a letter to Appellant from the Principal, which Appellant received on March 12, 1992.

On March 30, 1992, the media specialist saw Appellant talking with two or three students in the hallway and he did nothing to quiet a commotion in the hallway. She also saw Appellant approach a female student from behind, grasp her by the shoulders, and pull her to his body. On April 2, 1992, the media specialist saw Appellant hugging another female student. On April 3, 1992, she saw Appellant approach a girl, who was sitting on the ground, from behind. Appellant knelt, grasped the girl under her chin, and tilted her head back so she was looking up at him. The media specialist testified that she thought Appellant's conduct was unprofessional, that she could not trust his disciplinary judgment, and that she was afraid of retaliation if Appellant was returned to work.

Another teacher complained on March 30, 1992, and on April 2, 1992, that Appellant was sitting and eating lunch with her students and he failed to quiet them when they became loud. The teacher felt uncomfortable with Appellant being at the table and she did not trust him.

On April 1, 1992, a substitute teacher found her chair glued to the floor. Three girls then pretended to put glue in the teacher's chair. When she remonstrated them, the girls said that Appellant had told them they could pretend to put glue in the chair.

On March 26, 1992, the Director of Personnel and Professional Programs observed Appellant sitting at a student table in the lunchroom surrounded by girls. Appellant stroked the hair of one of the girls. The Director also testified that Appellant did not try to quiet the noise level in the lunchroom. The Director saw a girl link her arm through Appellant's arm, lean close to him, and whisper to him.

Another teacher testified that she had problems on March 3, 1992, with a student shooting rubber bands. When she took the student to Appellant, he said he was too busy. She had to take the student to the Principal.

Still another teacher filed a complaint on March 11, 1992, because she saw Appellant hugging and touching female students. She also filed a complaint on March 30, 1992, because she saw Appellant holding the hand of a female student.

There was testimony concerning a note that Appellant wrote to a female student who was a family friend. The note was written as a "joke" with the student's mother's permission. The note, which was signed with the initial of a male student, expressed love for the female student. The female student was aware that the note was a joke and had been written by Appellant. Another female student saw the note and told her mother. The mother became upset that Appellant would write such a note.

During the hearing before the Local Board, the Local Board refused to permit Appellant's counsel to ask any questions about the Superintendent's motives for bringing the

charges against Appellant. Appellant had expressed some desire to run for the position of Superintendent in the current election. The Local Board ruled that the Superintendent's motives were immaterial to the charges against Appellant.

PART III

DISCUSSION

On appeal, Appellant claims that (1) the Local Board improperly limited the scope of Appellant's cross examination; (2) the Local Board failed to notify Appellant of its decision within thirty days after the hearing; (3) the notice of dismissal was defective because the Local Board failed to make findings of fact note was written as a "joke" with the student's mother's permission. The note, which was signed with the initial of a male student, expressed love for the female student. The female student was aware that the note was a joke and had been written by Appellant. Another female student saw the note and told her mother. The mother became upset that Appellant would write such a note.

During the hearing before the Local Board, the Local Board refused to permit Appellant's counsel to ask any questions about the Superintendent's motives for bringing the charges against Appellant. Appellant had expressed some desire to run for the position of Superintendent in the current election. The Local Board ruled that the Superintendent's motives were immaterial to the charges against Appellant.

PART III

DISCUSSION

On appeal, Appellant claims that (1) the Local Board improperly limited the scope of Appellant's cross examination; (2) the Local Board failed to notify Appellant of its decision within thirty days after the hearing; (3) the notice of dismissal was defective because the Local Board failed to make findings of fact and conclusions of law; (4) the Local Board denied Appellant due process because it failed to notify him that he was being charged with other good and sufficient cause, and (5) the evidence was insufficient to support the charges.

We first address Appellant's claim that the Local Board improperly limited Appellant's cross examination. Appellant argues that he should have been permitted to cross examine the Local Superintendent about the Superintendent **'5** feelings concerning Appellant's announcement that he intended to run for the school superintendent position and thereby expose any biases of the Local Superintendent. The Local Superintendent's testimony, however, only concerned his actions when he was notified by the Principal that complaints had been received. Whether the Local Superintendent was biased was irrelevant to the questions raised by the charges. The Local Superintendent was involved only to the extent of bringing the charges. The Local Superintendent did not witness any of the actions or provide any testimony concerning Appellant's actions. We, therefore, conclude that the Local Board did not improperly limit Appellant's right to cross examination.

Appellant next claims that the Local Board's decision should be reversed because the Local Board failed to provide written notice of its decision within thirty days after the hearing in accordance with O.C.G.A. § 20-2-1160. The Local Board announced its decision at the conclusion of the hearing on May 21, 1992. The written notice was mailed to Appellant on June 22, 1992. Appellant argues that since O.C.G.A. S 20-2-1160(a) requires an appeal to be filed within thirty days after a decision, the Local Board's failure to notify him before the thirty days expired denied him due process. Appellant, however, was not harmed by the Local Board's failure to issue a written notice within thirty days after the decision was reached because Appellant filed a notice of appeal within the thirty day period.

Appellant next claims that the Local Board's decision was defective because it did not contain any findings of fact or conclusions of law. Local boards of education, however, are not required to make findings of fact and conclusions of law. See, Wright v. Dodge Cnty. Bd. of Educ., Case No. 1978-4 (Ga. SBE, Apr. 13, 1978); Beard v. Laurens Cnty. Ed. of Educ., Case No. 1977-14 (Ga. SBE, Dec. 8, 1977).

Appellant next claims that the Local Board denied him due process because he was not notified that his termination would be sought under the provisions of O.C.G.A. § 20-2-940(a)(8), "other good and sufficient cause." The specific charges against Appellant were insubordination and immorality. The charge letter also listed some courses of conduct that the Local Superintendent deemed inappropriate.

The purpose of the charge letter is to permit a teacher to present a defense against the charges. In this case, Appellant was able to present a defense against all of the charges; nothing would have been gained by adding the words "other good and sufficient cause" to the charge letter. The courses of conduct the Local Superintendent deemed inappropriate fall within the category of other good and sufficient cause and it was these charges that Appellant had to defend himself against; he did not have to defend himself against a generic term of "other good and sufficient cause." We, therefore, conclude that Appellant received sufficient notice to permit him to present a defense against the charges and he was not denied due process.

Finally, Appellant claims that the evidence was insufficient to support the charges. As indicated above, the Local Board did not make any findings of fact or conclusions of law to establish the basis for their decision to terminate Appellant's contract. 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 Bd. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Ed. of Educ., Case No. 1976-11 (Ga. SEE, Sep. 8, 1976).

In the notice of charges, the Local Superintendent listed insubordination and immorality as specific reasons for requesting the Local Board to terminate Appellant's contract. In addition, the Local Superintendent listed some other broad charges that, as stated above, fall under "any other good and sufficient cause," i.e., unprofessional conduct, failure to complete assigned tasks, and failure to properly enforce school rules and mete out discipline.

There was no credible evidence in the record that Appellant acted immorally. Appellant adopted a method of interacting with the students -- listening to them, talking with them, and hugging them -- that has been effective in some schools. The evidence, however, does not show that any of his actions were immoral. They do, however, support the charge of insubordination.

On March 11, 1992, the Local Superintendent and the Principal met with Appellant and told him that he was to avoid physical contact with female students. There was, however, evidence that after March 11, 1992, some female students hugged Appellant and he hugged them.

There is, therefore, some evidence that Appellant was insubordinate because he did not follow the directive of the Local Superintendent and the Principal. Even if Appellant's methods of interacting with students may be superior to the method dictated by the Local Superintendent and the Principal, once they had given instructions to Appellant to avoid his methods and adopt theirs, Appellant was obligated to follow their directions.

There was also evidence that Appellant failed to enforce noise discipline within the lunchroom and was "too busy" to discipline a student involved in a rubber band throwing incident. Appellant also wrote a note to a student that was outside his duties as an assistant principal and which caused concern by a parent who was not involved in the incident. These actions support the charge of "other good and sufficient cause."

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was some evidence that Appellant was insubordinate and acted or failed to act in a manner that supports the charge of other good and sufficient cause. The decision of the Local Board is, therefore,
SUSTAINED.

This 10th day of September, 1992.

Mr. Abrams, Mr. Brinson, Mr. Sears and Mr. Sessoms were not present.

James H. Blanchard
Vice Chairman for Appeals