STATE BOARD OF EDUCATION

STATE OF GEORGIA

LINDSEY HAIRE,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1993-12**
vs.	:	
	:	**DECISION**
TALBOT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY

This is an appeal by Lindsey Haire ("Appellant") from a decision by the Talbot County Board of Education ("Local Board") to dismiss him from his position as principal. The Local Board dismissed Appellant on charges of incompetency, willful neglect of duty, insubordination, and other good and sufficient cause, primarily because of his failure to maintain discipline within the elementary and high school where he served as principal. Appellant claims that he was not given adequate notice of the charges and that the evidence did not support the charges. The Local Board's decision is sustained.

PART II

FACTUAL BACKGROUND

On October 26, 1992, the Local Superintendent wrote to Appellant that he was suspending Appellant from his duties as principal and would recommend termination of Appellant's contract because (1) discipline had deteriorated to the point where the instructional program was suffering, (2) teachers were not being supervised, (3) Appellant failed to communicate with his teachers, and (4) Appellant failed to comply with the directives of a professional development plan. The letter also gave a list of the witnesses who were expected to testify against Appellant and said the hearing would be held on November 10, 1992. The hearing was eventually held on January 27-28, 1993, and the Local Board made a decision on January 28, 1993.

The hearing was delayed after Appellant made repeated requests for more specificity in the charges. By the time of the hearing, the Local Superintendent, through his attorneys, had written three additional letters to detail the charges against Appellant and list the witnesses with a summary of their testimony.

As a result of the letter exchanges, Appellant was informed that he was charged with incompetency, insubordination, willful neglect of duty, and other good and sufficient causes under O.C.G.A. § 20-2-940. The letters outlined, among other things, that discipline at the school had deteriorated since school started, that Appellant had failed to require the teachers to exercise control over the students, and that Appellant had failed to follow the professional development plan that had been prepared for him.

Appellant had served as principal at the combined elementary-high school for six years. During the last two years, the Local Superintendent expressed concern to Appellant about the lack of discipline in the school. At the end of the 1991-1992 school year, the Local Superintendent informed Appellant that he would reluctantly recommend renewal of Appellant's contract, but he was placing Appellant under a professional development plan. The Local Superintendent also informed Appellant that discipline at the school had to improve.

There was evidence presented at the hearing that during the first two weeks of September, 1992, discipline improved over what it had been during the previous year. The Local Superintendent and the teachers who testified that they began seeing a decline in discipline during the latter half of September, 1992. Contrary to the Local Superintendent's instructions, Appellant gave general instructions to his teachers in bulletins and at staff meetings rather than meeting with teachers individually. Many teachers in the school were not standing in the doorway of their rooms and monitoring the students as they passed from class to class. Students were permitted to roam the hallways during class periods without supervision. One teacher testified that she observed Appellant enter the lunchroom when it was in an uproar, but Appellant did nothing to quiet the students. Instead, he turned and exited the lunchroom.

At the conclusion of the hearing, the Local Board voted to terminate Appellant's contract because his actions during the 1992-1993 school year demonstrated incompetency, willful neglect of duty, insubordination, and other good and sufficient cause. Appellant then filed a timely appeal to the State Board of Education.

PART III

DISCUSSION

Appellant claims on appeal that there was no evidence of incompetency, willful neglect of duty, insubordination, or other good and sufficient cause to justify termination of his contract. The Local Board maintains that there was evidence that Appellant failed to maintain discipline, that Appellant failed to communicate with his teachers in the manner directed by the Local Superintendent, and that Appellant was unable to confront and give specific directions to his staff.

"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 Bd. of Educ.,* Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.,* Case No. 1991-14 (Ga. SBE, Aug. 8,1991).

In this case, there was evidence presented that during the 1992-1993 school year, the Local Superintendent found that the teachers were not standing in their doorways and supervising the students when they changed classes, contrary to the instructions he had given Appellant, students were leaving their classes without passes, teachers were not reporting the names of absent students, students were leaving campus, and fights were occurring on a regular basis. In October, 1992, a gang fight occurred at the school and one student had to go to a doctor. The special education instructor testified that there were discipline problems in the physical education classes, despite her complaints to Appellant. She also testified that the lunchroom was chaotic, but Appellant did nothing to quell the noise and activity. Other teachers testified that discipline in the school was better at the beginning of the school year than it had been in previous years, but the discipline began to deteriorate during the middle of September, 1992. The State Board of Education concludes that the evidence does not show that Appellant willfully neglected his duties or was insubordinate, but there is evidence that Appellant was incompetent because of his inability to maintain discipline in the school.

Appellant claims that the evidence clearly shows that discipline under his administration was better than it was when he assumed his duties as principal and it was better than it has been since he was suspended. Appellant claims that he must be measured against the same standard applied to others in his position. Since discipline was worse both before and after his administration, Appellant claims he was not incompetent under the standards the Local Board has applied to others in his position.

Teachers, however, testified that discipline has improved since Appellant was suspended. The Local Board could choose to believe the teachers and determine that such evidence showed an inability to maintain discipline.

Appellant also argues that his due process rights were violated because of the Local Superintendent's failure to give him adequate notice of the charges. The notice of charges informed Appellant that he was being charged with incompetence, that the discipline at the school had continued to deteriorate, that students were roaming the halls during class periods without supervision, teachers were not being supervised, and that students were not supervised in the lunchroom. In addition, Appellant was informed about all of the documents that would be submitted.

O.C.G.A. § 20-2-940 provides, in part, that the notice given to a teacher or principal in a dismissal proceeding has to state:

> (1) the cause or causes for ...[the] discharge in sufficient detail to enable him fairly to show any error that may exist therein;
>
> (2) The names of the known witnesses and a concise summary of the evidence to be used against him.

O.C.G.A. § 20-2-940(b)(1) and (2).

The test to be applied is whether the notice permits the person charged to establish a defense without the benefit of any discovery. The State Board of Education has previously ruled that the notice does not have to contain specific dates, times, places, and people involved when the teacher had been previously warned during conferences about improper actions, *Morton v. Griffin-Spa/ding City. Bd. of Educ.,* Case No. 1985-49 (Ga. SBE, Feb. 13, 1986), and when the notice was accompanied by a corrective action plan and letters that detailed the teacher's deficiencies, *Barfield v. Ginned City. Bd. of Educ.,* Case No. 1984-8 (Ga. SBE, Sep. 13, 1984). In each case, the State Board of Education looked to see if the teacher or principal was able to present a defense against the charges.

In this case, Appellant effectively cross examined the witnesses presented against him and presented rebuttal testimony to try to refute the charges made against him. Perhaps he presented a strong defense only because of the skill of counsel, but the record does not show that Appellant was unable to present a defense. We conclude that Appellant received sufficient notice to show any error.

Appellant also claims that he was denied due process because the Local Board's legal advisor accompanied the Local Board when the Local Board began deliberating in executive session. The record shows that Appellant objected to the legal advisor accompanying the Local Board while it deliberated, but the Local Board ruled against the objection. The record, however, does not show whether the legal advisor accompanied the Local Board, or gave the Local Board any advice. In *Alderman v. Appling Cnty. Bd. of Educ.,* Case No. 1992-9 (Ga. SBE, Jul. 9, 1992), the State Board of Education observed that there was no showing of harm when the local board received copies of two cases from its attorney. Similarly, the record here does not show that there was any improper communication or that Appellant was harmed by any communication. We, therefore, conclude that there is no evidence that Appellant was denied due process.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to support the Local Board's decision to terminate Appellant because of incompetence, and that Appellant was not denied due process in the notice he received or the role played by the Local Board's legal advisor. Accordingly, the Local Board's decision is hereby SUSTAINED.

This 12th day of August, 1993.

Messrs. Sears and Williams were not present.

Robert M. Brinson
Vice Chairman for Appeals