

STATE BOARD OF EDUCATION
STATE OF GEORGIA

LARRY LEWIS,	:	
	:	
Appellant,	:	
	:	CASE NO. 1997-19
vs.	:	
	:	DECISION
CARROLL COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Larry Lewis (Appellant) from a decision by the Carroll County Board of Education (Local Board) to terminate his teaching contract after finding him insubordinate and that cause existed under the provisions of O.C.G.A. § 20-2-940 to terminate because he continued to physically discipline students after being told by the principal to avoid such conduct, and he violated two directives concerning his presence on campus. Appellant claims he was denied due process in the conduct of the hearing. The Local Board’s decision is sustained.

Appellant taught for the Local Board for fourteen years as a middle school physical education teacher. During the 1995-1996 school year, the Local Board suspended Appellant without pay for thirty days because he used physical force against a female student. The suspension was upheld by the State Board of Education. *Lewis v. Carroll County. Bd. of Educ.*, Case No. 1996-43 (Ga. SBE, Nov. 14, 1996). The suspension occurred because Appellant had been directed not to touch his students when he disciplined them unless he needed to protect another student from physical injury.

On September 16, 1996, at the Villa Rica Middle School, Appellant grabbed a sixth - grade female student by the arm when she became disruptive in a line. Witnesses testified that Appellant grabbed the student with both hands. After the class, the Student went to the principal’s office. She was crying and asked for ice to put on her arm because it hurt.

Appellant’s principal met with him and Appellant admitted he had touched the student, but he claimed that the incident was insignificant. The principal told Appellant to leave the school campus. Appellant, however, did not leave the campus. Instead, approximately one and one-half hours later, he met the student and asked her if she was hurt.

Appellant was assigned to another middle school. On October 3, 1996, he asked the Local Superintendent for permission to return to Villa Rica Middle School to check on the

grades of his former students. The Local Superintendent told Appellant he could go to the Villa Rica Middle School campus after the students were gone from school. On October 7, 1996, Appellant drove to the Villa Rica Middle School at 11:00 a.m. while school was still in session. Based upon the September 16 incident and Appellant's failure to follow directions about being on campus, the Local Superintendent charged Appellant with insubordination and recommended termination of his teaching contract. On November 6, 1996, the Local Board conducted a hearing and voted to terminate Appellant's teaching contract. Appellant then filed a timely appeal with the State Board of Education.

On appeal, Appellant claims he was denied due process because (1) the hearing was not held within 10 days after his suspension; (2) one of the Local Board members did not recuse himself, even though he was the brother-in-law of Appellant's former principal; (3) an attorney improperly served as legal advisor to the Local Board; (4) the Local Board deprived him of any opportunity to present the disciplinary records of the student, and (5) the Local Board violated his contractual right to discipline a student.

"If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made." *Hutcheson v. DeKalb County Bd. of Educ.*, Case No. 1980-5 (Ga. SBE, May 8, 1980). "The State Board of Education, as an appellate body, is not authorized to consider matters that have not been raised before the [l]ocal [b]oard." *Sharpley v. Hall County Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983). Appellant did not raise any issue before the Local Board about when the hearing was held. The State Board of Education, therefore, cannot review this issue.

Appellant claims that one of the Local Board members should have recused himself because he was the brother-in-law of Appellant's former principal. Appellant has not shown that the board member was biased and there is no indication in the record that the board member was biased. The State Board of Education concludes that it was not error for the board member to hear the case.

"Appellant also claims it was error for the attorney who was designated as a hearing officer to serve as the legal advisor to the Local Board after Appellant objected to his service as a hearing officer. O.C.G.A. §20-2-940(e)(4) provides that the chairman, or a hearing officer acceptable to the parties, may decide all questions relating to the admissibility of evidence or other legal matters. In the instant case, the attorney advised the chairman on what rulings to make and the chairman made the rulings. Appellant has not cited any rule that prohibits a local board from having a legal advisor available during a hearing. Since the rulings were made by the chairman of the Local Board, the State Board of Education concludes that there was no error" *Lewis v. Carroll County Bd. of Educ.*, Case No. 199643 (Ga. SBE, Nov. 14, 1996).

Appellant next claims that the Local Board erred by not permitting him to introduce the disciplinary records of the student involved. The student's discipline records were not relevant to the issue of whether Appellant grabbed her, or whether Appellant twice disobeyed directives about being on the campus of Villa Rica Middle School. The exclusion of the student's records, therefore, did not deprive Appellant of any due process rights.

Appellant next claims that the Local Board deprived him of his contractual right to discipline his students. He claims this right arises because of a Local Board policy that directs the teachers to handle their own disciplinary problems. The policy, however, does not permit teachers to use force. Appellant was counseled and directed to avoid touching his students except to avoid harm. The directive does not contravene the Local Board's policy. Appellant has not cited any other law or authority for his position. The State Board of Education, therefore, concludes that the Local Board did not deprive Appellant of any contractual rights.

The remaining issues raised by Appellant in his brief relate to the actions taken in connection with his suspension without pay. Such issues are not relevant to the instant proceeding and will not be considered by the State Board of Education.

The record shows that Appellant was directed not to touch his students. In spite of several conferences concerning his actions, the record shows that Appellant grabbed the female student because she stepped out of line. In addition, the record shows that Appellant either remained on campus or went to the campus at times when he was not supposed to be there. "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 County Bd. of Educ.*, Case No. 199 1-14 (Ga. SBE, Aug. 8, 1991). There was evidence before the Local Board to support its decision, and Appellant has not shown that the decision was so arbitrary and capricious as to be illegal.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deprive Appellant of any of his due process rights. Accordingly, the Local Board's decision is
SUSTAINED.

Ms. Willou Smith was not present.

This 30th day of July, 1997.

Larry Thompson
Vice Chairman for Appeals