

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>KATHLEEN HEMAK,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 1999-27</b>
	:	
<b>BIBB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Kathleen Hemak (Appellant) from a decision by the Bibb County Board of Education (Local Board) not to renew her teaching contract after finding her guilty of insubordination. Appellant claims that the evidence was insufficient to establish that she was insubordinate, and that termination was improper under the circumstances. The Local Board's decision is sustained.

On February 5, 1999, the Local Superintendent notified Appellant that he would recommend termination of her contract because of insubordination, incompetency, willful neglect of duties, unprofessional conduct, and other good and sufficient cause under O. C. G. A. § 20-2-940. Appellant asked for a hearing on the charges and a hearing was held before a tribunal on March 8-9, 1999.

Evidence was presented to the tribunal that in October 1998, a student skipped Appellant's keyboarding class and went to a counselor to obtain a transcript so the student could enter the Homecoming festivities. The counselor, who did not handle the transcripts, sent the student to the registrar to obtain the transcript. The Student obtained a pass from the registrar and went to Appellant's class with the pass when the class was over. The class had taken an examination, which Appellant had posted on the blackboard for several days, during the period. The Student told Appellant she had been to the counselor to obtain a transcript.

The next day, Appellant spoke with the counselor and found that the student had seen the counselor at 1:00 p.m. and obtained a pass from the registrar at 1:15 p.m. Appellant felt that the student had deliberately skipped her class, which began at 12:25 p.m., because of the test. Appellant told the student that she would receive a zero for the test and would have to serve detention. The student then went to one of her coaches, who wrote a note to the principal. The principal questioned the student and told the student she did not have to serve the detention and to tell the teacher that she, the principal, had said that Appellant was to permit the student to take the test.

Appellant refused to permit the student to take the test. The principal again talked with the student and found that the student had not been permitted to take the test. The principal then wrote a note to Appellant to let the student take the test because it was a policy of the school to permit students to make up the class when they were absent from class because they wanted to talk with a counselor. Appellant did not allow the student to take the test, but talked with her about obtaining extra points by coming in after class and doing some extra work.

The principal called Appellant into her office to discuss the situation and told Appellant that she had to allow the student to take the test. Appellant initially agreed, but later told the principal that she could not allow the student to take the test because she thought it was unethical. Appellant then told the principal to do whatever she had to do.

The tribunal found that Appellant was insubordinate because she refused to allow the student to take the test. The tribunal did not find any evidence to support the charges of incompetency, willful neglect of duties, unprofessional conduct, and other good and sufficient cause under O. C. G. A. § 20-2-940. The tribunal also did not make any recommendations concerning Appellant's discipline, but it recommended several changes in the way the principal managed the school. The Local Board, however, voted to terminate Appellant's teaching contract based upon the tribunal's finding of insubordination. Appellant then filed a timely appeal to the State Board of Education.

On appeal, Appellant claims that the evidence did not support a finding of insubordination. Instead, Appellant claims, there was a difference in opinion on the ethical considerations involved in changing the student's grade. "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). The tribunal heard the witnesses discuss what took place and concluded that Appellant was insubordinate, although she argued her ethics position. Since there was evidence to support the tribunal's finding, the State Board of Education is bound by the finding.

Appellant also claims that the Local Board should not have terminated her teaching contract because she was not given any remedial assistance or subjected to any progressive discipline as provided for in O.C.G.A. § 20-2-210. The provisions of O.C.G.A. § 20-2-210, however, do not provide a teacher with any substantive benefits. *Fry v. Clayton Cnty. Bd. of Educ.*, Case No. 1987-27 (Ga. SBE, 1987). Consequently, the Local Board was free to accept or reject these circumstances in making its decision.

During the hearing before the tribunal, Appellant presented evidence that she had filed three grievances about actions taken by the principal and an assistant principal. Appellant claims that the termination was retaliatory because of the three grievances. Except for the fact that Appellant filed the grievances, there was no evidence that the termination was retaliatory.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of August 1999.

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Bruce Jackson  
Vice Chairman for Appeals