

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALICE V. HENRY,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-25
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Alice V. Henry (Appellant) from a decision by the Fulton County Board of Education (Local Board) to terminate her teaching contract because of insubordination and job abandonment. Appellant claims that she did not abandon her position and she was not insubordinate in failing to report to work because she had informed the school administration that her job assignment was too stressful. Appellant, however, failed to file her appeal with the Local Superintendent in a timely manner and the State Board of Education lacks jurisdiction to consider her appeal. Accordingly, the appeal is dismissed.

In the spring of 2003, Appellant signed a contract to teach during the 2003-2004 school year. At the time, Appellant was assigned to the Harriet Tubman Elementary School. She asked for a transfer, but there were no other positions available for her. Throughout the summer, Appellant met with several administrators and told them she would not go back to work at Harriet Tubman Elementary. Each of the administrators told her that failure to report for work on August 5, 2003 would be considered insubordination and neglect of duties and could result in termination. Appellant, nevertheless, insisted that she was not going back to work at the school.

On August 5, 2003, Appellant failed to report for work and did not report for work at any time thereafter. On August 8, 2003, the Local Superintendent notified Appellant that her contract would be terminated because of insubordination, willful neglect of duty, and other good and sufficient cause because of her failure to report to work and job abandonment. A hearing was held on August 30, 2003 before a tribunal. The tribunal recommended termination of Appellant's contract. On October 30, 2003, the Local Board voted to accept the findings and recommendation of the tribunal and terminated Appellant's contract.

On December 1, 2003, Appellant filed an appeal with the State Superintendent of Schools. Appellant was notified that the appeal should have been filed with the Local Superintendent. On December 11, 2003, Appellant filed an appeal with the Local Superintendent and asked for the record to be forwarded to the State Board of Education.

O.C.G.A. § 20-2-1160 requires an appeal to be filed with the local superintendent within 30 days after the local board makes its decision. Appellant's appeal, however, was not filed until

40 days after the Local Board's decision. The Local Board, therefore, has asked for dismissal of the appeal because it was untimely filed.

Appellant claims that filing an appeal with the State Superintendent of Schools meets the requirements of O.C.G.A. § 20-2-1160, thus making her appeal timely. Appellant, however, did not file the appeal with the State Superintendent of Schools until 32 days after the Local Board's decision, thus making it late even if filing with the State Superintendent was appropriate. In addition, however, Appellant's claim overlooks the plain language of O.C.G.A. § 20-2-1160, the regulations adopted by the State Board of Education, Reg. 160-1-3-.04(4), case law that interprets appellate practice procedures, and decisions by the State Board of Education.

O.C.G.A. § 20-2-1160 provides, in relevant part:

(b) ... The appeal shall be in writing and shall distinctly set forth the question in dispute, the decision of the local board, and a concise statement of the reasons why the decision is complained of; and the party taking the appeal shall also file with the appeal a transcript of testimony certified as true and correct by the local school superintendent. The appeal shall be filed with the superintendent within 30 days of the decision of the local board, and within ten days thereafter it shall be the duty of the superintendent to transmit a copy of the appeal together with the other matters in the file relating to the appeal to the state board. The state board shall adopt regulations governing the procedure for hearings before the local board and proceedings before it.

O.C.G.A. § 20-2-1160(b)(Michie, 2001 ed.).

It is clear that "the superintendent" referred to in the statute is the local superintendent and not the State Superintendent. The statute initially states that a copy of the transcript, "certified as true and correct by the local school superintendent," has to be filed with the appeal. The next sentence refers to filing the appeal with "the superintendent," without any antecedent reference to the State Superintendent. The State Superintendent is not in a position to "transmit a copy of the appeal together with the other matters in the file relating to the appeal to the state board" since the entire record is in the hands of the local superintendent. The statute also states that the State Board of Education is to adopt regulations governing appeals from local board decisions. The statute, thus, alerts an appellant to the existence of regulations governing appeals from decisions by a local board of education.

The State Board of Education has adopted Reg. § 160-1-3-.04, which has been in effect since 1990. The regulation provides:

(4)(a) After a hearing by the [local board of education] ..., any party aggrieved by a decision of the LBOE ... may appeal to the state board by filing the appeal in writing with the local school superintendent. [emphasis added].

(d) The appeal to the State Board of Education shall be filed with the local school superintendent within 30 days of the decision in question. [emphasis added].

Rules and Regulations of the State of Georgia, § 160-1-3-.04, as amended June 15, 1998.

The regulation explicitly states that the appeal is to be filed with the local school superintendent. Thus, if any misconception could arise from the wording in O.C.G.A. § 20-2-1160 over who the appeal is to be filed with, the regulation is very clear in specifying that the appeal is to be filed with the local superintendent.

Appellant cited *Elbert County Board of Education v. Gurley*, 215 Ga. App. 205, 450 S.E.2d 258 (1994) for the proposition that “the superintendent” referred to in O.C.G.A. § 20-2-1160 is the State Superintendent. *Gurley* involved an appeal that was made from a decision by the State Board of Education. The appeal was filed directly with the superior court rather than with the State Board of Education. The Court of Appeals ruled that the superior court did not have jurisdiction over the case because O.C.G.A. § 20-2-1160 required the appeal to be filed with the State Board of Education rather than the superior court. The Court reasoned that the appeal had to be filed with the State Board of Education because the State Superintendent is required to transmit the record and transcript to the superior court. The Court’s rationale, rather than supporting Appellant’s argument, points out why an appeal from the decision of a local board of education has to be filed with the local superintendent, i.e., the local superintendent has to transmit the record and transcript to the State Board of Education. Thus, under *Gurley*, the State Board of Education lacks jurisdiction to consider an appeal that was not filed with the local superintendent.

Previous State Board of Education decisions have also addressed the matter of filing an appeal with the local superintendent. “The plain wording of the statute, however, requires the appeal to be filed with the local superintendent within thirty days; it does not provide that an appeal can be mailed and considered to be filed with the local superintendent on the date of mailing.” *Michael R., et al. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1995-35 (Ga. SBE, Sep. 14, 1995). In *Martha P. v. Tift Cnty. Bd. of Educ.*, Case No. 1984-17 (Ga. SBE, Mar. 14, 1985), the State Board of Education held that it did not have jurisdiction to consider an appeal filed with it rather than with the local superintendent.

Based upon the foregoing, it is the opinion of the State Board of Education that it lacks jurisdiction to consider the appeal since the appeal was not filed with the Local Superintendent within 30 days after the Local Board made its decision. Accordingly, the appeal is hereby DISMISSED.

This _____ day of March 2004.

William Bradley Bryant
Vice Chairman for Appeals