

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JEANETTE GOFF,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2004-33
	:	
MONTGOMERY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Jeanette Goff (Appellant) from a decision by the Montgomery County Board of Education (Local Board) to suspend her without pay for eight calendar days because she was insubordinate and for other good and sufficient causes under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local Board's decision was arbitrary and capricious, denied her due process, and was not supported by the evidence. The Local Board's decision is sustained.

On December 4, 2003, the Local Superintendent had a meeting with Appellant in the office of the high school principal. Appellant, whose husband is a member of the Local Board, planned to plant a tree on the grounds of the high school as a memorial to a recently deceased member of the Local Board. The Local Board had met and decided that it wanted to establish some guidelines for remembering deceased educators, but it approved the planting of a tree to remember the recently deceased Local Board member in the front of the high school, which represented a change in the location from where Appellant had planned to plant the tree. The Local Superintendent was meeting with Appellant to tell her about the Local Board's plans and to let her know that the tree would be planted in a different location.

Appellant appeared for the meeting and appeared to be in an agitated state. When the Local Superintendent told her the tree would be planted in front of the school, Appellant jumped up and screamed, "No! Hell, no! We are not planting a tree."

Appellant continued to scream at the Local Superintendent and told her that she was just playing politics. Appellant's principal ordered her to sit down and stop shouting, but she refused and continued to berate the Local Superintendent. Appellant then said she was going to call her husband. The Local Superintendent told her that it was unnecessary to involve her husband and that she was not to call. Appellant then went to the office door and said, "I'm through. I'm through." The Local Superintendent then told her to submit a letter of resignation if she was quitting. Appellant then walked out the door. The Local Superintendent told the principal that Appellant was suspended for three days with pay

and that they would meet again to consider the matter. The Local Superintendent then returned to her office in another building.

Shortly thereafter, Appellant and her husband appeared in the principal's office. The principal told her that he was not going to talk with her or her husband, but that they needed to go talk with the Local Superintendent. The three of them then went to the Local Superintendent's office.

At the Local Superintendent's office, Appellant's husband began shouting at the Local Superintendent. When Appellant's husband threatened to strike the principal, the Local Superintendent summoned the sheriff. When the sheriff arrived, Appellant's husband continued to threaten the principal, but the sheriff was able to calm the situation. Later, the Local Superintendent informed Appellant that she would be suspended for the remainder of the semester without pay because of insubordination and other good and sufficient causes.

When the Local Board convened to hold a hearing on the charge against Appellant, the Local Superintendent moved to quash a subpoena issued to another member of the Local Board. The motion was granted because the member did not know anything about the incident that occurred at the school.

At the conclusion of the hearing, the Local Board voted to suspend Appellant for the remainder of the semester. Appellant then filed her appeal to the State Board of Education.

Appellant claims that the Local Board's quashing of the subpoena for another board member to testify resulted in a denial of her due process rights. She also claims that she was denied due process because the Local Board was not fair and impartial since her husband, who is a member of the Local Board, was a witness and another Local Board member was subpoenaed to be a witness. Appellant also claims that the Local Board denied her due process rights because it imposed the suspension based on the Local Superintendent's conflict with her husband. Appellant further claims that she was denied due process because her suspension is not allowed under the provisions of O.C.G.A. § 20-2-940. Finally, Appellant claims that the evidence did not support the Local Superintendent's charges that she was insubordinate and acted unprofessionally.

Appellant claims that the Local Board did not have the authority to quash a subpoena; that only a court has the authority to quash a subpoena. Appellant argues that O.C.G.A. § 24-10-22(b)(1) authorizes only a court to quash or modify subpoenas. As pointed out by the Local Board, O.C.G.A. § 24-10-22 only applies to subpoenas for the production of documents and not to subpoenas for witnesses. In addition, the Local Board acts as a "court" when it serves in its quasi-judicial capacity and conducts evidentiary hearings as authorized by the Legislature. Subpoenas are issued by local boards of education under the authority of O.C.G.A. § 20-2-940(d). If they have the authority to issue subpoenas, then it is only logical that they have the authority to quash a subpoena they have issued, without the necessity of resorting to a superior or other court to conduct

a separate and independent hearing on the merit of the subpoena. To require the interference of a superior or other court to settle such questions would negate the very purpose of local boards of education conducting hearings, which is to avoid putting matters, which local boards of education have unique knowledge about, into the court system. The State Board of Education concludes that Appellant's claim of a denial of due process because the Local Board quashed a subpoena is without merit.

Appellant next claims that she was denied due process because the Local Board could not constitute a fair and impartial tribunal since her husband was a member of the Local Board and another member had been subpoenaed as a witness. Under Appellant's view, an independent tribunal should have heard the matter. Appellant, however, did not establish any evidence that the Local Board could not be fair and impartial. Appellant's husband did not participate in the hearing, neither as a witness nor as a member of the Local Board. There was no evidence that the other board member who had been subpoenaed had any knowledge about the incident, that he had any knowledge that anyone had been subpoenaed as a witness, or that he could not impartially decide the issues presented. Appellant claims that the other board member's conduct was similar to the conduct of the board member in the case of *Johnson v. Pulaski Cnty. Bd. Of Educ.*, Case No. 1996-44 (Ga. SBE, Nov. 14, 1996), where the State Board of Education held that the chairman of the local board should have recused himself because he had previously expressed an opinion about the employee. *Johnson*, however, is clearly distinguishable from the instant case. In *Johnson*, the board member had expressed a desire for a particular outcome, but in the instant case, the board member did not express a personal interest in the outcome. The State Board of Education, therefore, concludes that Appellant was not denied due process because the Local Board heard the evidence instead of referring the matter to a tribunal.

Appellant next claims that she is being disciplined because of the conflicts between the Local Superintendent and her husband, a member of the Local Board. Appellant bases this argument upon testimony by the Local Superintendent that at the end of the first confrontation in the principal's office she did not have any intent to impose any further discipline on Appellant beyond the suspension with pay. The Local Superintendent further testified that it was only after Appellant's husband became involved that she decided to recommend Appellant's suspension without pay. Based on this testimony, Appellant argues that she is being improperly disciplined only because of the conduct of her husband. There are two faults in this argument.

First, the discipline is being imposed by the Local Board and not by the Local Superintendent. While the Local Superintendent made the recommendation, it was the Local Board that ultimately decided whether any discipline should be imposed on Appellant. Thus, the Local Superintendent's intent was immaterial except, as it may have influenced how the Local Board voted. Secondly, the Local Superintendent may have changed her mind after Appellant chose to involve her husband after the Local Superintendent said that Appellant's husband did not need to be involved. Appellant's actions in the principal's office were sufficient to warrant her suspension without pay.

The State Board of Education, therefore, concludes that the Local Board did not impose sanctions upon Appellant because of the actions of her husband.

Appellant next argues that the Local Board's decision denied her due process because the punishment imposed was not authorized by O.C.G.A. § 20-2-940. Appellant argues that because the Local Board decided to suspend her without pay until the end of the semester, the suspension was for an indeterminate time period, and, since O.C.G.A. § 20-2-943 permits suspensions without pay only up to 60 calendar days, such an indeterminate time period is not authorized and leaves the suspension period in the hands of the Local Superintendent. Appellant did not raise this issue at the hearing when the Local Board announced its decision. "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 Cnty. 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 Local Board. *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 303 S.E.2d 9 (1983).

Finally, Appellant argues that there was no evidence to support the charge of insubordination. "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). There was evidence that Appellant refused to sit down when told and left the principal's office before the meeting was over. There was evidence that Appellant acted in an unprofessional manner by vocally attacking the Local Superintendent when the Local Superintendent attempted to explain the change in plans.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant any of her due process rights and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of May 2004.

William Bradley Bryant
Vice Chairman for Appeals