

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>DAVID JOHNSON,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2005-13</b>
	:	
<b>DOUGHERTY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by David Johnson (Appellant) from a decision by the Dougherty County Board of Education (Local Board) to terminate his teaching contract based upon immorality and other good and sufficient cause. Appellant claims that the Local Board denied him due process. The appeal is dismissed because it was not timely filed.

Appellant was employed by the Local Board in September 2002 as a fifth grade teacher. On the evening of February 9, 2003, Appellant’s two sons were interviewed by investigators about a whipping that Appellant administered to one of the boys while the other boy was in the room. Appellant used a belt and permitted the buckle end to swing freely so that the son received several welts and cuts from the blows.

The Local Superintendent learned about the incident and decided to recommend the termination of Appellant’s teaching contract because of immorality and other good and sufficient cause. The Local Board scheduled a hearing to be held on March 26, 2003 on the recommended termination. The Local Superintendent mailed a notice of the hearing to Appellant by certified mail, but Appellant refused to accept delivery of the letter. The Local Superintendent then had Appellant personally served by a school resource officer.

The Local Board conducted the hearing on March 26, 2003, but Appellant failed to appear. During the hearing, the Local Board received testimony that Appellant had beat his son with a belt, striking him with the belt buckle and drawing blood, and striking him in the face with a closed fist. At the conclusion of the hearing, the Local Board voted to terminate Appellant’s contract.

On the following day, March 27, 2003, the Local Superintendent wrote to Appellant and informed him that his contract for the 2003-2004 school year was not renewed. On April 11, 2003, the Local Board’s attorney wrote to Appellant and told him that the Local Board had voted on March 26, 2003 to terminate his teaching contract for the 2002-2003 school year.

Appellant filed an appeal to the State Board of Education with the Local Superintendent on April 28, 2003, but he did not file a copy of the transcript of the hearing with the appeal. On May 6, 2003, the Local Board's attorney informed Appellant that he needed to file a transcript of the hearing with his appeal and gave him instructions on how he could obtain a copy of the transcript. Appellant failed to file the transcript with the Local Superintendent until some time after August 25, 2004.<sup>1</sup>

O.C.G.A. § 20-2-940(f) provides that appeals to the State Board of Education taken from a local board's decision to terminate the contract of a teacher are to be governed by the provisions of O.C.G.A. § 20-2-1160, which provides that such appeals must be filed within 30 days after the local board makes its decision. In the instant case, the Local Board made its decision on March 26, 2003, but Appellant did not file an appeal to the State Board of Education until April 28, 2003, which was 33 days after the Local Board's decision. Since the appeal was not timely filed, the State Board of Education lacks jurisdiction to consider Appellant's appeal. *Boney v. County Bd. of Educ. of Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947). *See, also, Cooper v. Gwinnett Cnty. Bd. of Educ.*, 157 Ga. App. 289, 277 S.E.2d 285 (1981). The appeal must, therefore, be dismissed.

Appellant claims that he was denied due process because he did not receive notice of the hearing before the Local Board and the hearing was conducted without him being present. Appellant, however, is the author of his own woes. The Local Superintendent sent Appellant a certified letter about the hearing that conformed to the requirements of O.C.G.A. § 20-2-940, but Appellant refused to accept delivery of the letter. He also received personal delivery of notice, but chose to ignore the notice and did not attend the hearing. There is, therefore, no merit in Appellant's claim that he was denied due process because he did not receive notice.

Appellant also claims that the Local Board made its decision based upon hearsay evidence. The evidence presented at the hearing consisted of a video recording of Appellant's two sons describing the beating and the testimony of the counselor who interviewed the two boys. "[A] videotape is admissible where ... one who personally witnessed the events recorded testifies that the videotape accurately portrayed what the witness saw take place at the time the events occurred." *Phagan v. The State*, 268 Ga. 272, 281, 486 S.E.2d 876, 884 (1997). The evidence relied upon by the Local Board, therefore, was competent evidence.

Appellant also claims that there was no just cause for the Local Board to terminate his contract. Appellant appears to argue that he was not convicted in a court of law of battery against his son and that this fact bars the Local Board from dismissing him on the grounds of immorality. The evidence required to dismiss a teacher does not have

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<sup>1</sup> In a letter from Appellant to the Local Board's attorney, dated April 7, 2003, Appellant acknowledged that he had a copy of the transcript and would file it with the Local Superintendent. Appellant has not provided any reason for waiting for one year before filing the transcript.

to rise to the level required to obtain a conviction of a criminal charge. There was evidence before the Local Board that Appellant administered a savage beating to his son and appeared to be “out of control” while striking his son with his fists and with a belt. The Local Board could decide that such an individual should not be a teacher in the school system.

Based upon the foregoing, it appears that the Local Board did not deny Appellant his due process rights and there was evidence to support the Local Board’s decision. Appellant, however, failed to file his appeal in a timely manner to the State Board of Education, thus denying the State Board of Education jurisdiction to consider his appeal. The appeal, therefore, is  
DISMISSED.

This \_\_\_\_\_ day of December 2004.

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William Bradley Bryant  
Vice Chairman for Appeals