

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ELAINE STEELE,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2006-26</b>
	:	
<b>ATLANTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	<b>DECISION</b>
<b>Appellee.</b>	:	

This is an appeal by Elaine Steele (Appellant) from a decision by the Atlanta City Board of Education (Local Board) not to renew her teaching contract for the 2005-2006 school year after a hearing tribunal recommended against renewal based upon the Local Superintendent's charges of incompetence, insubordination, neglect of duty, and other good and sufficient cause. Appellant claims that her dismissal was predicated on an illegal leave policy of the Local Board and that there was no evidence to support the Local Board's decision. The Local Board's decision is sustained.

The Local Superintendent did not recommend the renewal of Appellant's contract as a kindergarten teacher at the end of the 2004-2005 school year based on incompetence, willful neglect of duties, insubordination, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant's principal recommended against renewal of Appellant's contract because of poor performance and excessive absences. The principal observed Appellant on several occasions and found her performance wanting. In a formal evaluation in January 2005, the principal gave Appellant an unsatisfactory rating. During the first semester of the 2004-2005 school year, Appellant was absent 14 times. She was absent 31 times during the 2004-2005 school year. A hearing tribunal, in an opinion that only states that Appellant was insubordinate because she failed to attend a convocation meeting, agreed with the Local Superintendent's recommendation not to renew Appellant's contract. The Local Board adopted the tribunal's recommendation and Appellant appealed to the State Board of Education.

Appellant claims that the Local Board's attendance and leave policy violates state law and the tribunal's reliance on the Local Board's policy so tainted the process that the Local Board's decision must be reversed. Neither Appellant nor the Local Board introduced the Local Board's attendance and leave policy, thus leaving us in the situation of being unable to examine the validity of the policy. There was testimony from the principal about only six days of absences being permitted, but the testimony of a lay employee cannot be taken as the official policy of the Local Board. The State Board of

Education, therefore, concludes that the issue of the validity of the Local Board's policy was not properly addressed by the parties to permit a decision.

Nevertheless, the principal relied on her own understanding of the Local Board's policy of permitting only six days of leave per year in making her recommendation not to renew Appellant's contract. The tribunal also relied on the principal's testimony to find that Appellant had excessive absences. O.C.G.A. § 20-2-850, however, provides that teachers are to be granted one and one-quarter days of sick leave per contract month, or 12-1/2 days per school year for a 10-month teacher, with the right to accumulate from year to year up to 45 days of sick leave. Although there was testimony that Appellant was absent a total of 31 days during the 2003-2004 school year, there was no evidence that her absences exceeded her accumulated sick leave. The Local Board, therefore, failed to establish that Appellant's absences exceeded those permitted by state law.

The tribunal, apparently, also found that Appellant was incompetent because she received four "below expectations" and fourteen "meets expectations," and received an overall rating of "below expectations."<sup>1</sup> Appellant, however, did not receive any "needs improvement" ratings on her evaluation. There was evidence, however, that the principal conducted several informal observations of Appellant during the year and found Appellant's teaching methods deficient. Despite attempts to improve Appellant's teaching methods by having her attend workshops and having consultants work with her, the principal did not see any improvement in Appellant's teaching.

"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 State Board of Education concludes that there was some evidence that Appellant was incompetent.

The Local Board failed to establish that Appellant was insubordinate. The charge was made because Appellant missed a convocation meeting, but there was no evidence that Appellant was directed to attend the meeting, or that she willfully refused to attend the meeting. The teachers apparently were told that there was a convocation meeting and they were expected to attend, but Appellant testified that she was ill and unable to walk to the meeting and was unable to talk with the principal about missing the meeting. There was no evidence that Appellant's absence from the meeting adversely affected the meeting or Appellant's ability to function in the school.

"Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an

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<sup>1</sup> The only finding made by the tribunal was that Appellant was insubordinate; there was no finding that Appellant was incompetent,

administrative superior." *Woods v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-13 (Ga. SBE, June 13, 1991). "Insubordination ... requires a showing of a deliberate refusal to execute a lawful command of a superior...The inability to complete a requirement is not a deliberate refusal to execute a command of a superior and, therefore, does not constitute insubordination." *Goode v. Atlanta City Bd. of Educ.*, Case No. 2005-07 (Ga. SBE, Jan. 13, 2005). The State Board of Education concludes that the Local Board failed to establish that Appellant's inability to attend the meeting amounted to insubordination.

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

This \_\_\_\_\_ day of December 2005.

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William Bradley Bryant  
Vice Chairman for Appeals