

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ETHELYN LUMPKIN,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-51
	:	
PELHAM CITY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by Ethelyn Lumpkin (Appellant) from a decision by the Pelham City Board of Education (Local Board) to terminate her contract as a counselor under the provisions of O.C.G.A. § 20-2-940 based upon charges of incompetency, insubordination, willful neglect of duties, and other good and sufficient cause. Appellant claims that she was denied due process because she was not permitted to *voir dire* the members of the Local Board, the Local Board’s attorney served as the hearing officer, she was denied access to documents, the hearing was not held within the required time, and she was denied an opportunity to present her evidence. The Local Board’s decision is sustained.

On April 13, 2005, the Local Superintendent wrote to Appellant and told her that he was recommending termination of her teaching contract because of incompetency, insubordination, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. The Local Superintendent had previously suspended Appellant from her duties on March 24, 2005, following charges that she had improperly removed some books from the school, but he did not schedule a hearing under the provisions of O.C.G.A. § 20-2-940(g).¹

Appellant requested a hearing on the termination of her contract, which the Local Board held on May 24-25, 2005. At the beginning of the hearing, Appellant moved to dismiss the proceedings because the hearing was not held within 10 days after Appellant was suspended and because certain documents were not made available. The Chairperson reserved the making of a ruling on the motions before the start of the hearing. Appellant also made a motion to *voir dire* the Local Board members, which was denied, but the members were asked whether they had any opinions or knowledge about the case and one member recused himself because he knew one of the witnesses. Appellant also objected to the Local Board’s attorney serving as an advisor to the Local Board because the

¹ O.C.G.A. § 20-2-940(g) provides that a local superintendent may temporarily relieve an employee from duty, but “such action by the superintendent shall not extend for a period in excess of ten working days, and during such period it shall be the duty of the local board to conduct a hearing on the charges ...”

attorney had attended a meeting where Appellant was accused of removing the books from the school. The Local Board voted to permit the attorney to serve as the legal advisor.

During the hearing, there was evidence that the administration of the student support services was changed so that the guidance counselors were given the responsibility of coordinating the student support teams (SST) within their school. Appellant refused to assume the duties that were involved until she had a discussion with the Local Superintendent. Appellant continued to resist the change by not providing the teachers with required forms, by failing to follow up, and by failing to maintain folders on students referred for SST services. At the beginning of the 2004-2005 school year, Appellant was directed to prepare lesson plans for her classes but she failed to prepare them despite the principal's directive that her failure to submit them would be considered insubordination. Appellant finally submitted lesson plans in January, 2005, but the principal found them inadequate. The principal directed Appellant to schedule classroom guidance activities beginning January 10, 2005, but Appellant failed to schedule the activities until she received a second directive from the principal. Appellant failed to forward the files for students who were receiving SST services when they went to the middle school; she claimed that she had shredded all of the SST files because the students were cured and the files were inactive. At the conclusion of the hearing, the Local Board decided to terminate Appellant's contract. Appellant then filed a timely appeal to the State Board of Education.²

On appeal, Appellant claims that the Local Board erred by not ruling on her motion to dismiss the proceeding based on the fact that a hearing was not held within 10 days as required by O.C.G.A. § 20-2-940(g). The chairman of the Local Board reserved ruling on the motion at the beginning of the hearing and the issue was not raised again during the proceeding. The Local Board issued its decision without explicitly considering the motion. Implicitly, however, the Local Board's action in voting on the recommendation to terminate Appellant's contract amounted to a decision to deny Appellant's motion to dismiss the proceeding. If the Local Board erred, it was a harmless error since there was an implicit ruling on the motion.

Appellant claims that she was denied due process because the hearing was not held within 10 days, as required by O.C.G.A. § 20-2-940(g), after she was suspended on March 24, 2005, because of an allegation that she improperly removed some books from the school. Instead, a hearing was held under the provisions of O.C.G.A. § 20-2-940(b)-(e) on the termination of Appellant's contract because of insubordination, incompetence, willful neglect of duty, and other good and sufficient cause, which requires that a hearing be held no sooner than 10 days after notice is given.³ In *Lynn v. City of Atlanta Bd. Of Educ.*, Case No. 1997-41 (Ga. SBE, Feb. 12, 1998), the State Board of Education faced a similar situation regarding a non-renewal hearing and held that the local board did not deny the teacher due process by failing to hold a hearing under O.C.G.A. § 20-2-940(g)

² The case was not docketed with the State Board of Education because it took eight months for the court reporter to prepare the transcript.

³ O.C.G.A. § 20-2-940(b).

when the teacher did not request such a hearing and did not file a mandamus action to compel such a hearing.

As pointed out in *Lynn*, a suspension under O.C.G.A. § 20-2-940(g) normally occurs after an incident that the local superintendent deems of such a serious nature as to require the removal of the teacher from the school and the hearing would concern that incident only. Because it involves only a single incident, the legislature apparently determined that a hearing could be held in less than 10 days because there would not be a need for much preparation to have a hearing. A termination proceeding, however, may involve several factors that are not encompassed in a single event, thus requiring more than 10 days in which to prepare. While it may have been improper not to grant Appellant a hearing concerning her suspension, the State Board of Education concludes that Appellant was not harmed because she received a hearing on her termination with an opportunity to defend against all of the charges.

Appellant also claims that the Local Board was estopped from holding a termination hearing when it failed to hold a hearing on the suspension within 10 days. This argument, however, overlooks the fact that the suspension involved only a single incident, the removal of books from the school, while the termination hearing concerned several other incidents in addition to the book removal. Thus, even if the Local Board had been estopped to conduct a termination hearing about the book removal incident, it was not estopped to conduct a hearing that concerned Appellant's inability to handle the SST process and refusal to follow the directions of her principal.

Appellant claims that she was denied due process because the members of the Local Board did not recuse themselves since they had voted earlier not to renew Appellant's contract for the 2005-2006 school year and Appellant was unable to conduct *voir dire* of the members of the Local Board. There is no requirement for local board members to be subjected to *voir dire*. They were, however, asked whether they had any previous knowledge of the facts and whether they could render a decision based solely on the facts presented at the hearing. All of the members of the Local Board, except one, who recused himself, acknowledged that they did not have any previous knowledge and could make a decision based solely on the facts presented. Appellant has not shown any facts that would indicate that any of the members of the Local Board had any bias in the matter. The Local Board did not grant Appellant a contract for the 2005-2006 school year because the Local Superintendent did not submit her name for renewal, which does not indicate that the Local Board was biased against Appellant, or even was aware that Appellant's contract was not renewed. The State Board of Education concludes that Appellant was not denied due process because she could not *voir dire* the members of the Local Board and they did not recuse themselves based on the fact that her contract was not renewed for the 2005-2006 school year.

Appellant claims that she was denied due process because the Local Board's attorney served as the legal advisor to the Local Board but had been present at a meeting where Appellant was accused of improperly removing books from the school and because there is no provision for a legal advisor to a local board contained in O.C.G.A. § 20-2-940. There was no showing that the attorney did anything at the meeting with Appellant other than offer legal advice to the Local Superintendent. The attorney also did not

participate in making the decision regarding the termination of Appellant's contract. In *Lewis v. Carroll Cnty. Bd. Of Educ.*, Case No. 1996-43 (Ga. SBE, Nov. 14, 1996), the State Board of Education found that the employment by a local board of an attorney to advise them during the course of a hearing did not constitute error. Similarly, in the instant case, since the attorney merely acted as an advisor and did not take part in the decision making process, he did not have an opportunity to influence the Local Board's decision. The State Board of Education concludes that Appellant was not denied due process because the Local Board's attorney served as the legal advisor to the Local Board during the hearing.

Appellant claims that she was denied due process because she was not given access to all of the documents she requested and that were presented at the hearing. There is no right of discovery granted in O.C.G.A. § 20-2-940 and Appellant has not shown how she was harmed by being unable to receive the documents before the hearing, nor was there any showing that Appellant attempted to obtain access to the documents by filing a "freedom of information" request.⁴ The State Board of Education concludes that Appellant was not denied due process because she did not review all of the documents before the hearing that were submitted at the hearing.

Appellant makes several other claims of illegality and denial of due process or exceeding of authority that essentially are restatements of her arguments discussed above. None of these additional claims are deemed to have any merit.

Appellant claims the evidence did not support the charges against her. "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 presented, as outlined above, that supported the charges against Appellant.

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, the Local Board did not abuse its discretion nor deny Appellant any of her due process rights. Accordingly, the Local Board's decision is hereby
SUSTAINED.

This _____ day of April 2006.

William Bradley Bryant
Vice Chairman for Appeals

⁴ O.C.G.A. § 50-18-71 *et seq.*