STATE BOARD OF EDUCATION
STATE OF GEORGIA

WILLIAM GORDON,	:	
	:	
Appellant,	:	
	:	**CASE NO.: 2022-26**
v.	:	
	:	**DECISION**
HENRY COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by William Gordon ("Appellant") from the decision of the Henry County Board of Education ("Local Board") to terminate his employment contract for unprofessional and unethical conduct and any other good and sufficient cause pursuant to O.C.G.A. § 20-2-940(a)(8). For the following reasons, the decision of the Local Board is hereby **AFFIRMED.**

I. FACTUAL BACKGROUND

The Appellant was a P.E. teacher and basketball coach at Hampton High School. During the second semester of the 2021-2022 school year, a female student, N.C., was in his class. The Appellant had instructed the students to download the Nike Run App for an assignment. Some of the students were having difficulty downloading the app. The Appellant asked N.C. and another student if they had downloaded the app yet. N.C. responded that she first needed to clear some space on her cell phone. The Appellant told N.C. that if she deleted the nudes from her phone, she would have space. N.C. found the comment very disturbing. She felt violated, and she was shocked that a teacher would say something like that. As soon as class ended, N.C. reported the incident to Mr. Sims, the assistant principal.

II. PROCEDURAL HISTORY

The Appellant was placed on paid administrative leave on January 19, 2022, pending an investigation by the school district's human resources department. By letter of March 4, 2022, the Superintendent for Henry County Schools ("Superintendent") notified the Appellant that she was seeking to terminate his contract of employment for unprofessional and unethical conduct and other good and sufficient cause. The notice further provided that the termination hearing would be held before the Local Board.

On March 28, 2022, a termination hearing was held before a tribunal comprised of three of the five members of the Local Board. A hearing officer presided over the proceedings. Later that day, the tribunal issued its *Findings of Fact and Recommendation to the Henry County Board of Education*. The tribunal found that the Appellant's conduct constituted unprofessional and unethical conduct and other good and sufficient cause pursuant to O.C.G.A. § 20-2-940(a)(8) so as to justify termination of the Appellant's employment contract with the Henry County School

System. Accordingly, the tribunal recommended that the Appellant's employment contract be terminated immediately. By letter of March 29, 2022, the Superintendent forwarded a copy of the tribunal's written findings and recommendation to the Appellant. The subject line of the letter was "Written Notice of Board Decision."

On April 18, 2022, the Local Board's attorney emailed a message to the Appellant that stated in part:

> It has come to my attention that you are under the impression that the Board's March 28th Decision to terminate your employment with HCS was a recommendation. While the Board does not agree with your position, the Board will nonetheless review the transcript of the hearing and take action on your employment at tonight's regularly scheduled business meeting ….

The court reporter certified the transcript on April 15, 2022. At its April 18, 2022 meeting, the Local Board reviewed the transcript of the termination hearing and voted to separate the Appellant from employment. The Local Board's attorney notified the Appellant of the Local Board's decision by email of April 19, 2022. The Appellant timely appealed the Local Board's decision to the State Board of Education ("State Board").

III. STANDARD OF REVIEW

In reviewing this appeal, the State Board must apply the "any evidence rule." Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. *See Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). *See also, Chattooga Cnty. Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010). "Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law." *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017). An abuse of discretion occurs "'if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence.'" *Id*.

IV. ISSUES ON APPEAL

"As an appellate body, . . . [the State Board] [is] not authorized to consider matters which had not been raised before the local board." *Sharpley v. Hall Cnty. Bd. of Educ.*, 251 Ga. 54, 55, 303 S.E.2d 9, 10 (1983). *See also*, O.C.G.A. § 20-2-1160 (e); *M.F. v. Newton Cnty. Bd. of Educ*., Case No. 2013-16 (Ga. SBE, Feb. 2013). The record shows that the Appellant did not previously raise issues pertaining to notice, the timeliness of the termination hearing, or the tribunal panel. The Appellant first raised these issues in his appeal to the State Board, and thus, the issues are not viable in this appeal.

Even if these issues were properly before this Board, they lack merit for the following reasons.

A. Did the Local Board Comply with the Requirements of the Georgia Fair Dismissal Act?

1. Was the Notice in Compliance with O.C.G.A. § 20-2-940(b)?

The Appellant asserts that the Superintendent failed to serve him with written notice of the cause of action or grounds for administrative leave in excess of ten (10) working days.

In that regard, O.C.G.A. § 20-2-940(b) provides:

> **Notice.** Before the discharge or suspension of a teacher, administrator, or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing and shall state:
> **(1)** The cause or causes for his or her discharge, suspension, or demotion in sufficient detail to enable him or her fairly to show any error that may exist therein;
> **(2)** The names of the known witnesses and a concise summary of the evidence to be used against him or her. The names of new witnesses shall be given as soon as practicable;
> **(3)** The time and place where the hearing thereon will be held; and
> **(4)** That the charged teacher or other person, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.

The record shows that by letter of March 4, 2022, the Superintendent notified the Appellant of the termination hearing. In the letter, the Superintendent articulated the grounds for the termination of the Appellant's contract (unprofessional and unethical conduct and other good and sufficient cause), a summary of the facts relevant to the grounds for termination, a list of witnesses and documentary evidence, the date, time, and place of the hearing, and the Appellant's right to counsel and compulsory process. The notice was sent to the Appellant via First Class U.S. Mail and Certified Mail, Return Receipt Requested. The notice was admitted into evidence at the hearing with no objection from the Appellant. The State Board finds that the notice requirements of O.C.G.A. § 20-2-940(b) were satisfied.

The Appellant also argues that he did not receive notice of intent and a copy of the governing Georgia code sections that are required for tenured teachers. The Appellant's argument appears to be based on O.C.G.A. § 20-2-942(b)(2), which pertains to the procedures to demote or to non-renew a teacher's contract of employment. The Local Board did not demote the Appellant or non-renew his employment contract. Therefore, the requirements of O.C.G.A. § 20-2-942(b) are inapplicable to this appeal.

2. <u>Was the Termination Hearing Held within the Timeframe Established by O.C.G.A. § 20-2-940(g)</u>?

The Appellant contends that the Local Board failed to hold a hearing within ten (10) working days from when he was placed on administrative leave as required by the Fair Dismissal Act. For the reasons set forth below, this contention lacks merit.

> **Superintendent's power to relieve from duty temporarily.** The superintendent of a local school system may temporarily relieve from duty any teacher, principal, or other employee having a contract for a definite term for any reason specified in subsection (a) of this Code section, pending hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his or her duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. In any such case, the superintendent shall notify the teacher or employee in writing of such action, which notice shall state the grounds thereof and shall otherwise comply with the requirements of the notice set forth in subsection (b) of this Code section. **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 in the same manner provided for in subsections (e) and (f) of this Code section, except that notice of the time and place of hearing shall be given at least three days prior to the hearing. During the period that the teacher or other employee is relieved from duty prior to the decision of the local board, the teacher or employee shall be paid all sums to which he or she is otherwise entitled.** If the hearing is delayed after the ten-day period as set out in this subsection at the request of the teacher or employee, then the teacher or employee shall not be paid beyond the ten-day period unless he or she is reinstated by the local board, in which case he or she shall receive all compensation to which he or she is otherwise entitled.
>
> O.C.G.A. § 20-2-940(g) (second emphasis added).

"[T]his Board addressed the issue of a teacher being placed on administrative leave with pay and held that 'O.C.G.A. § 20-2-940(g) is only triggered once an employee is notified of a hearing and charges.'" *Lepley v. Fulton Cnty. Bd. of Educ.*, Case No. 2013-68 (Ga. SBE, Aug. 2013) (quoting *Forde v. Clayton Cnty. Bd. of Educ.*, Case No. 2010-52 (Ga. SBE, May 2010).

The Appellant was placed on paid leave on January 19, 2022. On March 4, 2022, the Appellant was notified of the charges and the March 28, 2022 hearing date. After the Appellant received the notice of charges, he failed to object to holding the hearing outside of the ten-day window. The Appellant appeared at the hearing. The hearing officer gave the Appellant an opportunity to address any preliminary matters before the start of the hearing, and the Appellant raised no objection to the proceedings.

In a similar case, this Board found that the "Appellant chose to proceed with the hearing and failed to object to it. This Board finds that after Appellant received the . . . notice of charges with a hearing date beyond ten (10) working days, he was required to assert that his rights were being violated. Thus, this Board concludes that Appellant's failure to do so constitutes a waiver of his right to a hearing within ten (10) working days under O.C.G.A. § 20-2-940(g)." *Forde v. Clayton Cnty. Bd. of Educ*., Case No. 2010-52 (Ga. SBE, May 2010). Likewise, in the present case, the Appellant's failure to assert his right to have a hearing within ten (10) working days from the date of the notice constitutes a waiver of that right.

3. <u>Should the Appellant Have Received Notice that the Termination Hearing Would Take Place before a Tribunal</u>?

The March 4, 2022 notice of termination hearing provided that the hearing would take place before the Henry County Board of Education. The hearing was held before three of the five members of the Local Board. The Appellant argues that he should have been given notice that the hearing would take place before a tribunal rather than the full board. He further argues that the failure to notify him that the hearing would take place before a tribunal panel affected his ability to prepare a defense in violation of his due process rights.

O.C.G.A. § 20-2-940(e)(1) provides: "The hearing shall be conducted before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board for its decision thereon."

O.C.G.A. § 20-2-940(e)(1) does not require notice of the composition of the trier of fact. To the extent that the Appellant took issue with the tribunal, he should have objected at the termination hearing. His failure to do so constitutes a waiver of his right to now raise the issue on appeal. *See Forde v. Clayton Cnty. Bd. of Educ*., Case No. 2010-52 (Ga. SBE, May 2010).

The Local Board argues that the majority of the members of the Local Board were present at the termination hearing, and their actions were proper. The Local Board asserts that "[a] majority of the local board shall constitute a quorum for the transaction of business. The votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the local board of education, provided there is a quorum present." O.C.G.A. § 20-2-57(a). The Local Board further argues that because three of the five board members were present at the hearing and signed the written decision to terminate the Appellant's employment contract, the Local Board properly discharged its duties. To the extent that the action of the majority of the Local Board was improper, the Local Board argues that any defect was cured by the subsequent vote of the full board to terminate the Appellant's employment contract. The State Board finds the Local Board's argument persuasive.

The Appellant has not shown that the tribunal was improperly impaneled or that he should have been given notice that the termination hearing would take place before a tribunal panel instead of the full Board. The Appellant's argument as to this issue lacks merit.

Lastly, the Appellant has failed to show how the hearing before the tribunal panel of three Local Board members rather than all five members of the Local Board violated his right to due process or how his ability to prepare a defense was adversely affected. The State Board finds no merit to these claims.

4. Was the Appellant Responsible for the Transcription Expense?

O.C.G.A. § 20-2-940(e)(2) provides:

> The hearing shall be reported at the local board's expense. If the matter is heard by a tribunal, the transcript shall be prepared at the expense of the local board and an original and two copies shall be filed in the office of the superintendent. If the hearing is before the local board, the transcript need not be typed unless an appeal is taken to the State Board of Education, in which event typing of the transcript shall be paid for by the appellant. In the event of an appeal to the state board, the original shall be transmitted to the state board as required by its rules.

By letter of March 29, 2022, the Superintendent notified the Appellant of the tribunal's decision. The letter provided that should the Appellant appeal, the transcription of the hearing would be at his expense. The Appellant asserts that the information regarding the responsibility for the transcription expense was false and misleading. O.C.G.A. § 20-2-940(e)(2) provides that "[i]f the matter is heard by a tribunal, the transcript shall be prepared at the expense of the local board." Accordingly, since the termination proceeding was heard by a tribunal, the Local Board, not the Appellant, was responsible for the transcription cost. It appears from the record that the Local Board paid for the preparation of the transcript. The State Board finds no basis for reversal relative to this matter. To the extent that the Superintendent provided inaccurate information regarding payment for the transcript, the State Board finds that the error was harmless.

5. Did the Local Board Satisfy Its Burden of Proof as to the Charges Against the Appellant?

The Appellant argues that the Local Board bears the burden of proof and that the evidence is contradictory to the charges, findings, and decision of the Local Board.

Pursuant to the Fair Dismissal Act, the Local Board had the burden of proof at the hearing. O.C.G.A. § 20-2-940(e)(4). The standard of review for this appeal, however, is the "any evidence" standard. Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. *See Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978).

The Appellant contends that the Superintendent did not present sufficient evidence at the hearing to support the termination of his employment contract. The Appellant's argument is based on the purportedly conflicting testimony regarding the substance of the Appellant's comment to N.C. and N.C.'s confusion as to whether the Appellant made the comment on January 14 or January 18. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F.W. v. DeKalb Cnty. Bd.*

of Educ., Case No. 1998-25 (Ga. SBE, Aug. 1998). Based on the "any evidence" standard, there are facts sufficient to support the tribunal's findings and the Local Board's decision. This Board will not substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board's actions were arbitrary and capricious. *Dukes-Walton v. Atlanta Indep. Sch. Sys*., 336 Ga. App. 175, 784 S.E.2d 37 (2016); *King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013). The State Board finds that the decision was not arbitrary and capricious.

6. Was the Local Board's Decision Timely?

The Appellant contends that the decision was not issued within the timelines set forth in O.C.G.A. § 20-2-940(f). The relevant portion of the statute provides in pertinent part:

> **Decision; appeals.** The local board shall render its decision at the hearing or within five days thereafter. Where the hearing is before a tribunal, the tribunal shall file its findings and recommendations with the local board within five days of the conclusion of the hearing, and the local board shall render its decision thereon within ten days after the receipt of the transcript. Appeals may be taken to the state board in accordance with Code Section 20-2-1160, as now or hereafter amended, and the rules and regulations of the state board governing appeals.

On March 28, 2022, the tribunal issued its *Findings of Fact and Recommendation to the Henry County Board of Education*. The tribunal recommended that the Appellant's employment be terminated immediately. By letter of March 29, 2022, the Superintendent notified the Appellant of the tribunal's decision. On April 18, 2022, the attorney for the Local Board notified the Appellant that the Local Board considered the March 28 *Findings of Fact and Recommendation to the Henry County Board of Education* as the decision of the Local Board and not a recommendation. Nevertheless, the Local Board would review the transcript and vote on the matter at its April 19, 2022 meeting. On April 15, 2022, the court reporter certified the transcript. At its April 19 meeting, the Local Board voted to terminate the Appellant's employment contract.

The Appellant has not shown that the Local Board violated O.C.G.A. § 20-2-940(f). The tribunal issued its recommendations on March 28, 2022, which was within five (5) days after the hearing. The court reporter certified the transcript on April 15, 2022. The Local Board voted to terminate the Appellant's contract at its meeting on April 18, 2022, which was within ten (10) days after the receipt of the transcript. On April 19, 2022, the Local Board notified the Appellant of the decision of the Local Board and the Appellant's appeal rights. The State Board finds no merit to this issue.

The Appellant also argues that the Local Board failed to comply with O.C.G.A. § 20-2-940(f)) because it terminated the Appellant's contract immediately after the March 28, 2022 hearing. The Local Board counters that the recommendation and decision of the quorum of the Local Board was sufficient to terminate the Appellant's contract.

For the reasons stated earlier in this decision, the State Board find that the quorum of Local Board members was sufficient to discharge the duties of the Local Board at the termination hearing. O.C.G.A. § 20-2-57(a).

The Appellant argues that the Local Board removed him from the payroll prior to the Local Board's adoption of the tribunal's recommendation. The Local Board counters that even if the quorum were not sufficient, O.C.G.A. § 20-2-940(g) requires a local board to cease paying an employee who has been relieved of duty for disciplinary concerns ten (10) days after he is relieved of duty. The Local Board posits that since the Appellant was placed on leave with pay beginning January 19, 2022, his payments should have ended ten (10) days later, or on January 29, 2022. Instead, the Appellant was paid through March 28, 2022. O.C.G.A. § 20-2-940(g) allows an employee to receive back-pay after the tenth day of being relieved of duty if he is reinstated. The Local Board notes that the Appellant formally resigned his employment with the Local Board, and that because the Appellant was properly terminated and tendered his resignation, he was not entitled to any backpay or additional compensation.

Moreover, with regard to payment to the Appellant while he was on administrative leave, O.C.G.A. § 20-2-940(g) provides: "If the hearing is delayed after the ten-day period as set out in this subsection at the request of the teacher or employee, then the teacher or employee shall not be paid beyond the ten-day period unless he or she is reinstated by the local board, in which case he or she shall receive all compensation to which he or she is otherwise entitled." Here, the Local Board paid the Appellant well beyond the ten-day period. Moreover, had the Appellant been reinstated, he would have received any other compensation to which he was entitled. Since the Appellant's contract was not reinstated, and also, in this case where the Appellant resigned from employment, any claim for additional compensation pursuant to O.C.G.A. § 20-2-940(g) fails.

Further, the Appellant asserts that the tribunal never served a copy of its recommendation on the Local Board and that there is no record of the Local Board's meeting or its vote on or adoption of the tribunal's recommendation. These assertions are not supported by the record and have no merit.

B. <u>Was the Local Board's Decision to Terminate the Appellant's Contract of Employment Arbitrary and Capricious</u>?

The Appellant asserts that the Local Board's decision was arbitrary and capricious, that the Local Board failed to provide the Appellant with the notice and charges against him pursuant to his request, and that the action was in retaliation to charges that the Appellant had previously filed against employees of the Local Board.

The Local Board counters that the issue as to whether the termination of the Appellant's employment contract was capricious or retaliatory was never addressed in the proceedings before the Local Board, and consequently, they cannot be raised at this time. In the alternative, the Local Board asserts that the proceedings did not meet the standards for being capricious or retaliatory. Specifically, the Local Board argues that the decision to terminate the Appellant's contract of employment was based on the Appellant's comment to N.C. The comment failed to meet the standards to which the Local Board holds its educators and was unprofessional, unethical, and constituted other good and sufficient cause justifying termination of the Appellant's employment contract.

The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision. After a review of the record, the State Board finds that there is evidence to support the Local Board's decision to terminate the Appellant's employment contract for the 2021-2022 school year. *See Ransum v. Chattooga Cnty. Bd. of Educ*., 144 Ga. App. 783 (1978); *Antone v. Greene Cnty. Bd. of Educ*., Case No. 1976-11 (Ga. SBE, Sept. 1976). This Board will not substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board's actions were arbitrary and capricious. *Dukes-Walton v. Atlanta Indep. Sch. Sys*., 336 Ga. App. 175, 784 S.E.2d 37 (2016); *King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013). "[T]he State Board of Education will not disturb the finding [of the Local Board] unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ*., Case No. 1998-25 (Ga. SBE, Aug. 1998). After a review of the record, the State Board finds that there is evidence to support the Local Board's decision to terminate the Appellant's employment contract for the 2021-2022 school year. The Local Board's decision was not arbitrary and capricious. Thus, the Local Board's decision will not be disturbed.

C. Other Issues

"Any party aggrieved by a decision of the local board rendered on a contested issue after a hearing shall have the right to appeal therefrom to the State Board of Education. 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." O.C.G.A. § 20-2-1160(b).

The Appellant raises other general complaints and grievances that are inconsistent with the requirements of O.C.G.A. § 20-2-1160(b), and, therefore, are not properly brought before this Board on appeal.

V. CONCLUSION

For the foregoing reasons, the State Board **AFFIRMS** the decision of the Local Board.

This 25th day of August, 2022.

LEONTE BENTON
VICE CHAIR FOR APPEALS