

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>VINCENT KEITH JOHNSON,</b>	:	
	:	
<b>Appellant,</b>	:	
<b>v.</b>	:	
	:	<b>CASE NO. 1993-19</b>
	:	
<b>DECATUR COUNTY</b>	:	<b>DECISION</b>
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellate.</b>	:	

This is an appeal by Vincent Keith Johnson (“Appellant”) from a decision by the Decatur County Board of Education (“Local Board”) to uphold the decision of Appellant’s principal and the Local Superintendent to terminate Appellant’s services as a custodian. Appellant claims that his termination was improper because only the Local Board has the authority to terminate employees under the provisions of O.C.G.A. § 20-2-211. Appellant also claims that he was not evaluated, as required by O.C.G.A. § 20-2-210, which results in denying him due process. The appeal is dismissed because the State Board of Education lacks jurisdiction since the Local Board did not conduct a hearing.

Appellant worked for the Local Board as a custodian at the West Bainbridge Middle School. Appellant is not a certified, or professional, employee and was employed without the benefit of a contract.

The record indicates that Appellant’s principal was dissatisfied with Appellant’s performance and told him that he would have to improve. Appellant apparently attempted to learn some specifics of the complaints about his work, but the Principal did not provide any

specific complaints.

On December 8, 1992, the Principal dismissed Appellant. Appellant filed a grievance with the Local Superintendent. Upon Appellant's waiver of the decision timelines, the Local Superintendent upheld the Principal's decision on February 4, 1993. Appellant then appealed to the Local Board. On February 18, 1993, the Local Board voted against holding a hearing and to uphold the Local Superintendent's decision based upon the record. Appellant then filed an appeal with the State Board of Education.

The Local Board contends that the appeal should be dismissed because it made a decision without holding a hearing. Under the provisions of O.C.G.A. § 20-2-1160, only decisions made after a hearing can be appealed to the State Board of Education.

In Henderson et al. v. Fulton Cnty. Bd. of Educ., Case No. 1976-17 (SBE, 1977), the State Board of Education held that it did not have jurisdiction to consider the appeal of a non-certificated employee who worked without benefit of a contract, notwithstanding the fact that the board of education had granted the employee a hearing. The rationale adopted was that school law was not involved because the right to a termination hearing is granted only to employees "having a contract for a definite term," O.C.G.A. § 20-2-940(a), and the parties could not confer jurisdiction upon the State Board of Education by agreement or action when such jurisdiction does not exist by statute. The Henderson rationale is applicable in the instant case.

The Legislature has permitted appeals from local board decisions without the necessity of a hearing by the local board only when grievances are filed by certified employees, O.C.G.A. § 20-2-989.5 et seq. or when a local board approves the decision of a disciplinary tribunal, O.C.G.A. § 20-2-750 et seq. Otherwise, O.C.G.A. § 20-2-1160 requires a hearing on a contested

issue of school law. In the absence of a hearing, the State Board of Education does not have jurisdiction.

Based upon the foregoing, the State Board of Education concludes that it is without jurisdiction to consider the appeal because the Local Board did not conduct a hearing.

Accordingly, the appeal is hereby

DISMISS

This 8<sup>th</sup> day of July, 1993.

Mrs. King and Mr. Sessoms were not present. Mr. Al Abrams' seat is vacant due to his resignation effective April 30, 1993.

Robert M. Brinson  
Vice Chairman for Appeals

