

the charges and provided the names of two additional witnesses. The hearing before the PPC Tribunal began on October 26, 1995, and concluded on November 8, 1995.²

Appellant began teaching with Fulton County in 1974. She was assigned to the Hapeville area elementary schools in South Fulton County as an Instructional Support Teacher (IST) beginning in 1987. An IST is responsible for the testing and placement of exceptional children and does not have any classroom responsibilities. At the beginning of the 1991-1992 school year, Appellant was assigned to Hapeville Elementary School, which was a new school that resulted from the consolidation of two other schools.

During the 1991-1992 school year, Appellant noted and reported that several children appeared to have been subjected to sexual abuse. The common denominator with the children was a police officer, Walt West, who acted as a juvenile court liaison with the school. Appellant initially reported her suspicions to her principal and the school social worker. When she perceived that the Fulton County School System was not acting quickly enough on her reports, Appellant notified the Council for Child Abuse. The Georgia Bureau of Investigation and the Fulton County School System began an investigation but concluded there was insufficient evidence to go forward. Appellant then contacted the Fulton County District Attorney's office and the Clayton County District Attorney's office. As a result of Appellant's actions, Walt West was convicted of child molestation in the summer of 1994 after he pleaded guilty to several counts of sexual molestation of children.

During the 1993-1994 school year, the Hapeville principal found that Appellant was increasingly more difficult to work with and requested Appellant's transfer to another school. At the end of the 1993-1994 school year, Appellant was transferred, against her wishes, to the Dolvin Elementary and the Ridgeview Middle School in North Fulton County.³

At the beginning of the 1994-1995 school year, Appellant broke her kneecap and was absent from school until October 18, 1994. After she returned to school, Appellant was frequently absent. Appellant's principal at Dolvin Elementary asked Appellant to furnish excuses from doctors to show that she was ill, but Appellant did not furnish medical excuses for all her absences. Additionally, Appellant was frequently late in reporting to school in the mornings. The unexcused absences occurred in December, 1994, and January, 1995; the tardiness occurred from December, 1994, into March, 1995.

In November, 1994, Appellant reported to the Associate Superintendent, Human Resources, that her Hapeville Elementary principal was involved in the child molestation with Walt West. Her allegations were based upon statements made by two of the students who had been molested by Walt West. Eleven days later, Appellant made the same allegations to the Local Superintendent and to the Fulton and Clayton County District Attorney offices. The

² The hearing was delayed for reasons not set forth in the record.

³ On March 23, 1994, Appellant met with her Hapeville principal and the Executive Director of Elementary Schools. During the meeting, she screamed "I hate that school," "Get me out of that school," and other statements that indicated she wanted to leave Hapeville Elementary. Appellant claimed during the hearing that she did not mean these statements

Associate Superintendent, Human Resources, investigated Appellant's allegations and concluded that they were baseless. Although she was informed that the investigation did not support her charges, Appellant nevertheless continued to make the allegations.

Because she persisted in making charges against her Hapeville principal after notice that the charges were unfounded and the students had recanted their allegations, and because she was unable to comply with the Local Board's attendance policies, Appellant was administratively reassigned to the Central Office on March 28, 1995, following a meeting with the Associate Superintendent, Human Resources. At the meeting, the Associate Superintendent, Human Resources, gave Appellant three options: she could have a psychiatric examination with a psychiatrist of her own choice, or she could submit to a psychiatric examination by a psychiatrist of the Fulton County School System's choice, or she could face termination proceedings. The Associate Superintendent gave Appellant until April 10, 1995, to make a decision.

On April 11, 1995, the Associate Superintendent, Human Resources, met with Appellant to discuss her decision. Appellant chose the second option and an examination with a psychiatrist was scheduled. After Appellant failed to appear for two examinations, the Local Superintendent proceeded to initiate termination proceedings.

After the hearing, the PPC Tribunal found that between August 15, 1994, and March 28, 1995, Appellant was absent 87 days, of which 76.5 days were for illness, 5 days were for personal leave, 1 day for jury duty, 1 day for duty leave, and 4 days unexcused. The Tribunal found that Appellant improperly reported her absences on 10 occasions, and failed to provide medical excuses for five absences. In addition, Appellant was chronically tardy between October 18, 1994, and March 28, 1995, arriving at school from between 10 minutes to one hour late.

The PPC Tribunal found that on October 20, 1994, Appellant's Dolvin principal instructed her on how she was to conduct herself during educational support team (EST) meetings. On December 14, 1994, Appellant violated the instructions given to her by her Dolvin principal.

The PPC Tribunal found that Appellant's defense that she was being harassed and that there was a conspiracy between her Hapeville principal and her Dolvin principal did not sanction her behavior during the 1994-1995 school year. The Tribunal concluded that Appellant was insubordinate because she (1) failed to report her absences properly after being instructed by her Dolvin principal; (2) failed to provide medical excuses for her absences after being directed to do so by her Dolvin principal; (3) failed to arrive at school on time; (4) failed to open, read, and respond to her correspondence; (5) changed her school site reporting schedule without permission; (6) failed to carry out her 1ST responsibilities as instructed by her Dolvin principal; (7) failed to attend meetings with a psychiatrist after appointments were scheduled, and (8) continued to pursue allegations against her Hapeville principal after being instructed to stop.

The Tribunal found that Appellant willfully neglected her duties when she intentionally violated known absence and absence reporting policies and procedures, school work hours policy and procedure, and in visiting Hapeville on a day she had identified as an absence due to illness,

and in violating known policies concerning personal day absences.

The Tribunal also found that Appellant's contract could be terminated for other good and sufficient cause because Appellant had defied her superiors, and had pursued an investigation of the sexual molestation matters after the Associate Superintendent, Human Resources, had conducted an investigation in consultation with the Clayton County and Fulton County District Attorney offices and found that the allegations against the Hapeville principal were false, all of which constituted a significant departure from generally recognized professional standards.

Based upon its findings and conclusions, the PPC Tribunal recommended termination of Appellant's teaching contract. On December 12, 1995, the Local Board adopted the findings and recommendation of the PPC Tribunal. Appellant then appealed to the State Board of Education.

PART III

DISCUSSION

On appeal to the State Board of Education, Appellant claims that:

1. There was no evidence to support the Local Board's decision;
2. The Local Board's decision was arbitrary, capricious, and an abuse of discretion;
3. The hearing officer made several improper evidentiary rulings that constitute reversible error;
4. She was denied due process because the hearing officer failed to grant her motion to compel the production of documents, and
5. The Local Board improperly terminated her because she advocated for the rights of sexually abused children.

Under each of these claims, Appellant has also asserted several related claims. The central theme of Appellant's defense is that she was transferred and her contract eventually terminated in an effort to quiet her as part of a cover up of the misdeeds of a principal.

"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 (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). In the instant case, there is evidence in the record to support the PPC Tribunal's findings and conclusions.

Thus, even though Appellant claims she was terminated “as a conscious effort on behalf of the Fulton County School System to silence her accusations and cries of sexual molestation of children occurring in the Fulton County School System,” she acknowledges she had unauthorized absences on 3.5 days. Appellant also claims there was no direct evidence concerning her tardiness and the testimony of the Dolvin principal concerning tardiness was not credible. The credibility of the witnesses, however, is for the hearing tribunal to decide and will not ordinarily be set aside by the State Board of Education. The testimony of Appellant’s principals was sufficient to establish that she was tardy on numerous occasions.

Appellant claims that she never refused to be evaluated by a psychiatrist. The record, however, shows that Appellant failed to appear for examination on two occasions. The first examination was scheduled for April 17, 1995, at 11:00 a.m. Although she had not requested any leave, Appellant called the Associate Superintendent at 7:40 a.m. on April 17, 1995, and informed him she would not be available for the examination because she was in Michigan. Another examination was scheduled for 11:00 a.m. on April 20, 1995. On April 19, 1995, Appellant called the Associate Superintendent and told him that she would not be available for the April 20 examination because she had to take care of her neighbor’s children. During the hearing, Appellant claimed she went to the second examination, but the Associate Superintendent told her it was too late. The PPC Hearing Tribunal could consider these actions as showing deliberate defiance of a direct request by a superior and a refusal to be examined.

Appellant claims there was no evidence of willful neglect of duty, but, instead, her absences and tardiness were trivial violations of strict policies established by her Dolvin principal in an attempt to get her dismissed. She claims that such trivial violations are insufficient to find willful neglect of duty when weighed against 20 years of outstanding service. Whether the violations were trivial and the effect of 20 years of outstanding service were decisions for the Local Board to make, and the State Board of Education will not substitute its judgment for that of the Local Board.

Appellant next claims there was no evidence to support the Tribunal’s findings that there were other good and sufficient causes for dismissal because the evidence related to her reporting of child abuse, as required under the provisions of O.C.G.A. § 19-7-5. The PPC Tribunal, however, also found that Appellant’s defiance against her superiors was a basis for finding other good and sufficient cause for termination. In addition to defying the Associate Superintendent’s instructions to stop making accusations against her Hapeville principal, Appellant defied her Dolvin principal by failing to follow instructions concerning the conduct of EST meetings, failing to produce requested medical excuses, failing to properly request leave, and failing to appear for examination when directed.

Appellant’s obligation under O.C.G.A. § 19-7-5 was to report her suspicions to her superior. After receiving a letter from the Associate Superintendent, Human Resources, that her allegations had been investigated and that there was no evidence of child abuse on the part of the Hapeville principal, Appellant then wrote a letter to God, the Associate Superintendent, the members of the Fulton County Board of Education, the Fulton and Clayton County District Attorney offices, the Governor, the Lieutenant Governor, the Professional Practices Commission,

and “anyone else who will listen and care,” and reiterated her allegations. Appellant’s actions went far beyond her obligations under O.C.G.A. § 19-7-5.

Appellant next claims that the hearing officer committed reversible error by failing to suppress the October 19, 1995, letter that supplemented the original charge letter, and in permitting one of the witnesses identified in the October 19, 1995, letter to testify. Appellant claims that the October 19, 1995, letter revealed so much new information that she was unable to adequately prepare for the hearing.

The Fair Dismissal Act requires an employee to be given notice at least ten days in advance of a hearing of the “cause or causes for his discharge ... in sufficient detail to enable him fairly to show any error that may exist therein...” O.C.G.A. § 20-2-940(b)(1). Additionally, the “names of new witnesses shall be given as soon as practicable...” O.C.G.A. § 20-2-940(b)(2). In *Haire v. Talbot Cnty. Bd. of Educ.*, Case No. 1993-12 (Ga. SBE, Aug. 12, 1993), the State Board of Education stated that, “The test [of the sufficiency of a notice] to be applied is whether the notice permits the person charged to establish a defense without the benefit of any discovery.” In the instant case, however, Appellant is not claiming that the notice was insufficient, but that additional charges were made in the October 19, 1995, letter.

The October 19, 1995, letter does not set forth any additional charges, but it does provide the details of additional events under the charges. Under *Haire, supra*, the original notice to Appellant was sufficient to inform Appellant of the charges and to permit her to establish a defense. As argued by the Local Board, the October 19, 1995, letter provided Appellant with additional information not otherwise available that should have enhanced her ability to present a defense. There was no requirement to present the documents disclosed in the October 19, 1995, letter before the hearing. The State Board of Education concludes that the admission of the October 19, 1995, letter did not prejudice Appellant, nor did it prevent her from presenting a defense.

Appellant also claims that the hearing officer committed error in not requiring the production of certain documents. The record, however, shows that the hearing officer ordered the production of the medical excuses asked for by Appellant, but such excuses were unavailable because they had been destroyed as a normal procedure at the end of the 1994-1995 school year. The hearing officer denied the production of notes taken by the attorney for the Local Board at a meeting attended by Appellant and some special education reports on which Appellant had some input. Neither of these denials, however, had any effect on Appellant’s ability to present a defense. Appellant attended the meeting where the attorney took notes and there were no charges made in connection with the meeting. Additionally, there were no charges made in connection with Appellant’s ability to provide input in the preparation of special education reports. Neither of the requested items, therefore, was relevant to the case. The State Board of Education, therefore, concludes that the hearing officer did not commit any error by excluding the documents.

Finally, Appellant claims that her dismissal violates her rights to free speech under the First Amendment to the United States Constitution. The record, however, shows that Appellant

was dismissed because of her failure to follow the Local Board's policies and procedures, not because she reported any child abuse. The State Board of Education, therefore, concludes that Appellant was not denied her freedom of speech.

PART IV

DECISION

Based upon the foregoing, it is the opinion of the State Board of Education that there is evidence to support the Local Board's decision, the hearing officer did not commit any reversible error, and Appellant's free speech rights were not denied. Accordingly, the Local Board's decision is
SUSTAINED.

This 9th day of May, 1996.

Ms. Barbara King, Mr. Dick Owens, Ms. Julie Keeton, Walt Sessoms and Mr. Ed Floyd were not present.

Robert M. Brinson
Vice Chairman for Appeals