

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT W. GILL,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-52
	:	
MUSCOGEE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	DECISION
Appellee.	:	

This is an appeal by Robert W. Gill (Appellant) from a decision by the Muscogee County Board of Education (Local Board) that denied him any relief on a grievance he filed in which he claimed that his principal discriminated against him because of his race, gender and disability. Appellant claims that he was denied representation of his choice, the hearing officer improperly conducted his hearing, and the Local Board failed to notify him of his right to appeal. The Local Board’s decision is sustained.

O.C.G.A. § 20-2-989.5, *et seq.*, requires local boards of education to establish policies to handle complaints with the intent to “resolve problems at the lowest possible organizational level with a minimum of conflict....” O.C.G.A. § 20-2-989.5(a). The policies have to provide for hearings at various levels, with the right to appeal to the next higher level. O.C.G.A. § 20-2-989.8(1). There are three levels of hearings and appeals: Level I is the initial meeting between the employee and the employee’s immediate supervisor; Level II is before the central office administrator, and Level III is before the local board of education. O.C.G.A. § 20-2-989.8(2). Employees are permitted to be represented by “an individual of his or her choice” at the Level II and Level III hearings. O.C.G.A. § 20-2-989.8(5). The Level III hearing, before the local board, is a *de novo* hearing. O.C.G.A. § 20-2-989.8(7). Employees are permitted to file a grievance concerning any matter except performance ratings, professional development plans, and the matters covered under the Fair Dismissal Act.¹ O.C.G.A. § 20-2-989.7(a). Appeals from the local board decision to the State Board of Education are governed by the provisions of O.C.G.A. § 20-2-1160. O.C.G.A. § 20-2-989.11.

Appellant filed a grievance in which he alleged that his principal was discriminating against him because of his race, gender, and disability. Both the Level I and the Level II administrators ruled that there was no discrimination and Appellant asked for a hearing before the Local Board.

¹ The Fair Dismissal Act is contained in O.C.G.A. § 20-2-940, *et seq.*

Appellant attended the Level III hearing before the Local Board accompanied by three other individuals, two who were from the teacher's union and an attorney. During the hearing before the Local Board, one of the union representatives presented Appellant's case. When the school system called a witness out of place, Appellant's representative began commenting on the response of the witness in a derogatory manner. The hearing officer repeatedly asked the representative to refrain from making comments about the testimony and from arguing with the witness. Finally, the hearing officer warned the representative that if he persisted in his conduct he would be ejected from the hearing. Despite the warning, the representative persisted in making his comments and the hearing officer asked him to leave the hearing. The representative left the hearing and the hearing officer then told Appellant that he could have the other union representative or the attorney represent him. Appellant responded that he would defer to the union representative. The union representative then responded that they were leaving the hearing and Appellant, the union representative and the attorney also left the hearing. The hearing proceeded without Appellant's presence and the Local Board decided that there was no evidence of discrimination. Appellant then filed an appeal to the State Board of Education.

On appeal, Appellant claims that he was denied representation of his choice because one of his representatives was ejected from the hearing. Appellant also claims that the hearing officer erred in letting the hearing continue after he left. Additionally, Appellant claims that the Local Board failed to notify him of his right to appeal to the State Board of Education.

Contrary to Appellant's arguments, the hearing officer acted properly in ejecting a representative who failed to follow the hearing officer's directive not to berate the witness. The hearing officer's action in ejecting the representative was necessary to uphold the dignity of the hearing process, to provide an orderly and fair hearing to both parties, and to restrict the hearing to relevant matters.

The hearing officer also properly continued the hearing after Appellant's first representative left the room. Appellant had two other representatives with him at the hearing, one of them being an attorney. The hearing officer offered Appellant the opportunity to appoint either of these individuals as his representative for the remainder of the hearing. Appellant chose to select the union representative rather than the attorney to represent him and the union representative decided to retire from the proceeding. Since Appellant had representatives with him, the State Board of Education concludes that the hearing officer did not commit any error in proceeding with the hearing.

Appellant also claims that he was not informed of his right to appeal to the State Board of Education. Appellant, however, filed a timely appeal with the State Board of Education so there was no harm done if the Local Board failed to notify Appellant of his right to appeal. Appellant's claim, therefore, does not establish any basis to interfere with the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that Local Board provided Appellant with a fair hearing process and followed its own grievance policy. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of August 2005.

William Bradley Bryant
Vice Chairman for Appeals