

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>DEBORAH BURGER,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2011-70</b>
	:	
<b>HENRY COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by Deborah Burger from a decision by the Henry County Board of Education (“Local Board”) to terminate her employment contract on the grounds that she altered and falsified documents regarding her absences from work. The Local Board terminated Appellant’s employment contract pursuant to O.C.G.A. § 20-2-940 on the grounds of willful neglect of duty, insubordination and other good and sufficient cause. On appeal, the Appellant asserts that the Local Board erred by admitting evidence of other absences, and that the decision is not supported by the evidence. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

**I. PROCEDURAL BACKGROUND**

On or about April 4, 2011, Appellant was notified that her annual contract for the 2010-2011 school year was being recommended for termination. Appellant appealed the termination of her employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board terminated Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

**II. FACTUAL BACKGROUND**

During the 2010-2011 school year, Appellant was a teacher at Pleasant Grove Elementary and McDonough Elementary. On or about October 19, 2010, Appellant presented to her Principal at Pleasant Grove Elementary a medical excuse from her doctor that stated: “Please excuse any time missed by the above pt.” The Local Board obtained a copy of the doctor’s note directly from the doctor. The note provided by the doctor stated: “Please excuse any time missed by the above pt due to her apt w/us.”

On or about February 15, 2011, Appellant informed her new principal at McDonough Elementary of an upcoming doctor's appointment on Thursday, February 17, 2011, and that she might be absent on Friday, February 18, 2011, because she was a witness to an accident and was required to appear in court. Appellant was absent from work on both February 17 and 18, 2011. In support of her absence for the court date, Appellant provided the Principal with a subpoena from the Villa Rica Municipal Court. The document was suspicious to the Local Board because it identified the court start time of 11:30 p.m., it was issued on October 27, 2010, for a February court date, and was unsigned by the Court of Clerk. The Local Board contacted the Villa Rica Municipal Court, and learned that a subpoena was not issued for Appellant. A subpoena was issued on October 27, 2010, for Appellant's husband, David Burger, with a court date of November 19, 2010, and a start time of 1:30 p.m.

At the hearing, Appellant denied falsifying any of the absence records she submitted to the Local Board. Appellant also provided a letter from the attorney representing Mr. Burger, stating that he asked Appellant to appear on February 18, 2011, to be a witness for the defense. The letter does not state that Appellant appeared. Appellant testified that she did appear at court on February 18, 2011. After hearing the evidence, the Local Board terminated Appellant.

### **III. ERRORS ASSERTED ON APPEAL**

#### **A. Evidence of Other Absences.**

Appellant contends that the Local Board erred by admitting evidence regarding other absences which were not included in the Charge letter, and that this evidence was prejudicial. For the reasons set forth below, this Board finds this assertion without merit.

Appellant was charged with falsifying records. The Local Board questioned Appellant regarding several absences during the relevant time period in order to show that Appellant had a reason or motive to falsify the records. Appellant has failed to show how this evidence was prejudicial. To the contrary, Appellant testified that she did not recall any other absences during this time period. Furthermore, the Local Board offered evidence from the Principal establishing the prior absence. The Principal testified that her reason for requiring a doctor's note was because one was required after three (3) absences. This evidence was clearly relevant. Moreover, Appellant did not object to the Principal's testimony. Thus, this Board finds that the Local Board did not err by admitting this evidence as it was relevant and not prejudicial to Appellant.

**B. Record Evidence.**

The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is an abuse of discretion or the decision is 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. 1976).

The record shows that the October medical excuse provided by Appellant to the Local Board is different from the one provided by the doctor. Specifically the medical excuse provided by Appellant provides a broader excuse of "any time missed" from the actual doctor's note which limits the excuse to "any time missed by the above pt due to her apt w/us." Moreover, a comparison of the documents supports the Local Board's contention that the document was altered.

The record further shows that Appellant was not subpoenaed for February 18, 2011, to appear at the Villa Rica Municipal Court. Again, the Local Board provided evidence of the document submitted by Appellant and one issued to her husband. The subpoena provided by Appellant to the Local Board appears to be an altered document of the subpoena issued to her husband on October 27, 2010. Moreover, the evidence provided by Appellant from the attorney does not state that Appellant was subpoenaed. Thus, even assuming Appellant appeared at the Villa Rica Municipal Court on February 18, 2011, at the request of her husband's attorney, Appellant has failed to provide evidence that she was subpoenaed pursuant to the document that she submitted to the Principal. Thus, the record contains evidence supporting the Local Board's decision that Appellant falsified this document.

**IV. CONCLUSION**

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, **SUSTAINED**.

This \_\_\_\_ day of November 2011.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS