STATE BOARD OF EDUCATION
STATE OF GEORGIA

EUGENE JACKSON,	:	
	:	
Appellant,	:	
	:	**CASE NO. 2018-23**
v.	:	
	:	**DECISION**
DALTON CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Eugene Jackson ("Appellant") from a decision by the Dalton City Board of Education ("Local Board") finding the Appellant's following complaints: 1) that he was improperly denied a pay increase from the effective date of his certification upgrade on December 8, 2014 through June 30, 2015, after earning an education specialist's degree; 2) that his creditable years of experience for the purpose of determining salary were improperly reduced from 27 years to 3 years; 3) that he was improperly compensated on a 10-month calendar instead of on a 12-month calendar; and 4) that Senior JROTC Instructor Command Sergeant Major Heriberto Vazquez ("Senior Instructor") was improperly compensated with full military service credit placing his pay near the top of the doctorate level teacher salary schedule even though his highest education credential is a master's degree, without merit.

On appeal, the Appellant contends that Dalton Public Schools ("District") offered insufficient evidence making the Local Board's decision arbitrary and capricious. He additionally asserts that his procedural due process rights were violated when the Local Board failed to provide him written notice of the right to appeal the Local Board's Level III hearing decision. For the reasons set forth below, the decision of the Local Board is **AFFIRMED**.

I. PROCEDURAL AND FACTUAL BACKGROUND

The Appellant began work with the District in November 2007 as a junior JROTC instructor. JROTC instructor salaries are at the discretion of the District in accordance with the Georgia Professional Standards Commission ("GaPSC") rules as long as Minimum Instructor Pay ("MIP"), as determined by the military, is maintained. *Junior Reserves Officers' Training Corps Program, Cadet and Command Regulation* 145-2, 4-34, February 1, 2012.

Under GaPSC rules, there is no requirement that a district recognize degree levels, types of certification or years of experience when determining JROTC instructor wages. The instructors are paid under Permit. Ga. Comp. R. & Regs. 505-2-.10 Permit, Section (9)(d) states: "Salaries for JROTC instructors are not calculated in the same ways as other certified personnel. Determination of JROTC instructor salary is negotiated by the LUA [local unit of administration] in accordance

with United States Code, Title 10 Armed Forces, Part III, Chapter 102 Junior Reserve Officer's Training Corps and appropriate Georgia Department of Education rules regarding state salaries and supplements and experience for salary purposes. When JROTC units are established, the respective military service branch will provide instructor pay information to the LUAs."

Since JROTC instructor salaries are negotiated with the military and must equal or exceed the MIP, the District, which is the LUA in this instance, used the State Salary Schedule, contained in Ga. Comp. R. & Regs. 160-5-2-.05, as a guide for determining instructor salaries. Although not actually subject to the State Salary Schedule, the junior instructor was "placed" approximately at the T-5 level and imputed maximum years of experience for the purpose of calculating pay and exceeding the MIP. The Senior Instructor was also imputed maximum years of experience and "placed" at the T-6 level, (akin to a master's degree) for the purpose of calculating wages and exceeding the MIP. Salary placement was not linked to actual military or teaching years of experience. Over time, the Senior Instructor's MIP exceeded the T-6 annual salary. Consequently, the senior officer's MIP was within the T-7 (doctoral degree) category of pay.

On or about October 2013, the GaPSC rules were changed to allow instructors to earn Standard Professional certificates. An instructor who earned Standard Professional certificate, was permitted, but not required, to be placed on the State Salary Schedule by actual degree level and years of teaching experience. Initially, the District decided to continue handling JROTC instructor pay as they had prior, regardless whether an instructor earned a Standard Professional certificate. The District's reasoning was that higher degrees were not required by the JROTC instructional program, not considered when the military set MIP, nor when the District determined the junior instructor salary which was above the MIP.

In December 2014, the Appellant completed the Georgia Teacher Academy for Preparation and Pedagogy (GaTAPP) program and received his renewable Standard Professional Certificate. Thereafter, the Appellant requested a transition to the State Salary Schedule which would recognize his certificate(s) and master's degree. In Spring 2015, the transition was approved. It ensured the Appellant that eventually his pay would increase since it was no longer limited to the junior instructor's maximum T-5 level. No longer paying the Appellant wages under Permit, the District ceased imputing maximum years at the T-5 level and returned to Ga. Comp. R. & Regs. 160-5-2-.05 Experience for Salary Purposes to determine the Appellant's salary. Under the rules, the Appellant, like non-JROTC instructors, was allowed three (3) years of military experience according to the Experience for Salary Purposes, Section (4)(c)(1) and all years of actual teaching experience, which at the time of his transition was seven (7) years. Consequently, the Appellant was placed at the T-6 level, with ten (10) years of total experience, rather than at the previous T-5 level with imputed maximum years of experience.

Although over time, the Appellant's wages were expected to increase in accordance with the salary schedule, at the time of the transition from Permit to salary schedule, he was earning more money at the T-5 level with maximum imputed experience than he could have earned at the T-6 level with 3 years of creditable military experience plus 7 years of actual teaching experience. For that reason, the District held the Appellant harmless, and continued to pay him at the maximum T-5 level until the State Salary Schedule caught up to his pay.

On October 6, 2017, the Appellant filed a complaint with the Local Board asserting that he did not receive a pay increase from December 8, 2014 through June 30, 2016 after earning his T-6 Education Specialist degree; that his creditable years of service were subsequently reduced from 27 years to three years; and that he was compensated on a 10-month salary schedule but worked a 12-month calendar. It was determined that the complaint could not be properly addressed by the Level I administrator at the Appellant's school. Therefore, a Level II hearing was conducted on October 23, 2017 by the District's superintendent, Don Amonett ("Superintendent"). The Superintendent determined that the Appellant's pay was not in violation of the laws or rules offered during the hearing. The Appellant appealed, and a de novo Level III hearing was conducted before the Local Board on December 4, 2017. The Local Board denied the Appellant relief. The Appellant appealed to the State Board of Education.

II. ISSUES ON APPEAL

A. Did the Local Board Violate the Appellant's Procedural Due Process Rights?

The Appellant claims that the Local Board violated his procedural due process rights by failing to provide him written notice of the right to appeal the Level III hearing decision. The record shows that the Local Board did not include the information regarding his appeal rights as required under O.C.G.A. § 20-2-1160(a).

Nevertheless, *Wilmer v. Clayton Cnty Bd. of Educ.*, Case No. 2012-40 (Ga SBE, May 2012) states:

> "In Glass v. City of Atlanta, 293 Ga. App. 11 (2008), the Georgia Court of Appeals stated:
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> > In Hardison v. Fayssoux, this Court recognized that "in its ordinary signification 'shall' is a word of command, and the context ought to be very strongly persuasive before that word is softened into a mere permission.' (Punctuation omitted.) However, we also noted that 'in the absence of injury to the defendant, a statute which directs that some act be done within a given time period but prescribes no penalty for not doing it within that time, is not mandatory but directory; that is, that in such instances 'shall' denotes simple futurity rather than a command.'
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> This Board finds that O.C.G.A. § 20-2-1160(a) does not provide for a penalty for the Local Board's failure to provide written notice to Appellant. However, this statute is mandatory if the Local Board's failure to comply causes injury to Appellant. *Glass*, 293 Ga. App. at 15, quoting *Hardison v. Fayssoux*, 168 Ga. App. 398, 400(1983)."

In this instance, the Local Board's failure to include the appeal rights did not injure the Appellant. He filed a timely appeal to the State Board. Therefore, the Local Board's failure to include the appeal rights in the Level III decision amounts to a harmless error.

Appellant further alleges that he did not receive the documents from the Level II hearing until a few minutes prior to the Level III hearing before the Local Board. However, the record reveals that all the documents supporting the Level II decision were provided to the Appellant via email on November 6, 2017, approximately a month before the Level III hearing. All other

documents considered by the Local Board at the Level III hearing were admitted into evidence at the Level II hearing and, as such, were already in the possession of the Appellant. Furthermore, the Appellant did not raise this objection at the Level III hearing and, as such, is barred from raising it for the first time on appeal. *S.M. v. Gwinnett Cnty. Bd. of Educ.*, Case No. 2006-60 (Ga SBE, May 2006).

The Appellant asserts that he was denied the opportunity to examine witnesses referenced by the District when presenting its case at the Level III hearing. Again, the Appellant did not raise this objection during the hearing and cannot raise it for the first time on appeal. Moreover, the District referenced no testimony by any witness. The references to "witnesses" were in the Level II documents which both parties stipulated as admissible at the Level III hearing. Therefore, there is no merit to Appellant's assertion that he was denied an opportunity to examine witnesses at the Level III hearing.

B. Was There Sufficient Evidence to Support the Local Board's Decision?

The Appellant contends that he submitted ample evidence showing that he was improperly denied a pay increase from the effective date of his certification upgrade, after earning his education specialist's degree. While he may have submitted significant evidence, the Local Board reviewed both his argument and evidence, as well as that of the District, and determined that in accordance with Ga. Comp. R. & Regs. 505-2-.10(9)(d), JROTC instructor salaries are calculated differently from standard teacher pay. As such, the District was not required to increase the Appellant's wages just because he earned additional degrees since JROTC instructor pay was not based on educational attainment but the MIP.

Additionally, the State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision, unless there is 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, Sept. 1976). "[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 County Bd. Of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 1998). In this instance, there is sufficient evidence showing the District's decision to not increase the Appellant's pay was within its authority and not improper.

The Appellant argues that his creditable years of military experience, for salary purposes, were improperly reduced from 27 years to 3 years after his Permit was converted to a Standard Professional Certificate. Under Ga. Comp. R. & Regs. 160-5-2-.05(4)(c)(1)(i), the Appellant was only entitled to three (3) years of creditable military service under the Standard Professional Certificate. There is nothing in the law that requires or prohibits the District from reducing the number of creditable years of military experience to achieve what it believes to be an appropriate salary for its employee.

The Appellant also argues that the Senior Instructor, with whom the Appellant worked as the junior JROTC instructor, was improperly compensated with maximum military service credited to him, placing him near the top of the doctorate level State Salary Schedule even though his highest educational attainment is a master's degree. Again, the record evidence shows that

JROTC instructor pay is negotiated with the military, based on the MIP, and not subject to increase based on educational attainment. The result being that a junior JROTC instructor with more education may earn less than a senior instructor.

The Appellant maintains that the District improperly compensated him utilizing a 10-month work calendar instead of a 12-month calendar. This issue cannot be decided by the State Board on appeal. An appeal to the State Board "requires a decision involving the administration or construction of school law for the State Board of Education to have jurisdiction." *Webb v. Bullock Cnty. Bd. of Educ.*, Case No. 1999-28 (Ga SBE, Aug. 1999). Whether the Appellant is properly paid under a 10-month contract or a 12-month contract is not a question regarding the administration or construction of school law and thus not subject to review by the State Board.

III. CONCLUSION

Based upon a review of the record and the foregoing reasons, it is the opinion of the State Board of Education that there is sufficient evidence to support the decision of the Local Board, the decision is therefore, **AFFIRMED**.

This 14th day of June, 2018.

Lisa Kinnemore

LISA KINNEMORE
VICE CHAIR FOR APPEALS