STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| LINDA TITUS, | ) | |
| Appellant, | ) | |
| v. | ) | CASE NO. 1985-22 |
| BIBB COUNTY BOARD OF EDUCATION, | ) | |
| Appellee. | ) | |

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings and the decisions of the Local Board are supported by the record submitted, and

DETERMINES AND ORDERS, that the issue of Appellant's nonrenewal was not decided by the Local Board and, therefore,

DETERMINES AND ORDERS, that the decision of the Bibb County Board of Education herein appealed from is hereby SUSTAINED.

This 10th day of October, 1985.

Mr. Temples was not present and Mrs. Jasper abstained.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

The undersigned members of the State Board of Education concur with the decision of the State Board of Education to sustain the decision of the Bibb County Board of Education, but feel that the facts presented to the Bibb County Board of Education warranted Appellant's dismissal as a teacher as recommended by the local superintendent.

Juanita Baranco

Richard C. Owens

Larry A. Foster, Sr.

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| | ) | REPORT OF STATE |
| Appellee. | ) | HEARING OFFICER |

PART I

This is an appeal by Linda Titus (hereinafter "Appellant") from a decision of the Bibb County Board of Education (hereinafter "Local Board") suspending Appellant from duty without pay for sixty (60) days for conduct bringing discredit on the Local Board and reflecting on the dignity or honor of the teaching profession. The charge against Appellant was based upon a factual situation in which Appellant was found in an out-of-the-way location with a male student on a Saturday when school was not in session. Appellant contends that no evidence was offered to support the finding that her conduct discredited the Local Board or reflected negatively on the dignity or honor of the teaching profession or the Local Board, that the standard is so vague as to be unconstitutional, that because the Board found no immorality, improper guidance, or use of her professional relationship to gain a private advantage, its

decision was unsound, and that the Administration violated Local Board policies in investigating the incident. Appellant requests relief by asking that her suspension by the Local Board and her nonrenewal by the Local Superintendent be reversed. The Local Board contends that the policy is not vague and that there is evidence to support the Local Board's decision and, therefore, the decision should not be disturbed on appeal. The State Hearing Officer recommends that the decision of the Local Board suspending Appellant for sixty days be reversed.

PART II

FACTUAL BACKGROUND

On March 4, 1985 the Local Superintendent notifed Appellant that, based on Local Board policy, he recommended to the Local Board that her contract of employment be terminated. The Superintendent stated that Appellant had violated the following provisions of Local Board policy:

> 1. Board Policy 4119 which provides in part that a teacher may be terminated for immorality which is defined as acts which are contrary to good morals, inconsistent with the rules and principles of morality and which are inimical to public welfare according to the standards of a given community.
>
> 2. Board Policy 4116.23 entitled Teacher Conduct and Dress which provides in part that 'The conduct of all employees at all times must be such that it will not bring discredit on the Bibb County Board of Education nor reflect on the dignity or honor of the teaching profession.'

3. Board of Education Rule 4116.31 which provides in part that 'Teachers' specific responsibilities shall be: ...2. To provide guidance to students which will promote their proper educational development and welfare' and which further provides in part that 'Principals and teachers are not to serve as advisors to parents of/and children not in their class or school.'

4. Violation of the Code of Ethics of the Bibb County Board of Education adopted pursuant to Board of Education Rule 4116.22 which provides in part as follows: 'In fulfilling his obligation to the student, the educator 1. shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety... 6. Shall not use professional relationships with students for private advantage.'

A hearing was held by the Local Board on April 17, 1985 and continued on April 18 and 19, 1985. At the hearing, testimony established that Appellant was requested by a fifteen year old black male student (hereinafter "Student") to assist him in obtaining his learner's driving license. The Student was not directly in one of Appellant's classes but was in her student cluster. The student cluster is a concept where teachers in the four main subject areas (math, English, social studies, and science departments) have the same students so that those teachers can plan together for the needs of the students. The Student frequently ate lunch with students in Appellant's classes and Appellant knew the Student through the cluster group contacts. It was explained through testimony that teachers were expected to work with students in their group and several

teachers testified that it was important to try to develop a "mothering" relationship with the students. Testimony established that the Student's parents did not have a car and, based upon the Student's request, Appellant agreed to assist the Student in obtaining his learner's license. She saw the Student when she was chaperoning a school dance on a Friday night and she told the Student she would meet him the next Saturday morning at the college library nearby. She intended to be at the library to work on a course she was taking. She called the Student the next morning and delayed the meeting because she would not be at the library until the afternoon. The Student met Appellant at the library and at approximately 3:00 p.m. she took him to the Driver's License Bureau where she went in and picked up a booklet the Student could use to study for the driver's test. When she came back to the car, she made some physical contact with the Student which involved her rubbing the Student's stomach. Appellant's testimony was that the Student told her his stomach hurt and she showed the Student how he could rub his stomach to get rid of the pain which she felt was caused by gas. The Student testified that Appellant tried to ease his stomach pains by poking his stomach. After that, the Appellant agreed to let the Student drive her car. They began driving in a parking lot near the License Bureau but there was a child driving a go-cart in that area

so they went out of the parking lot and onto a street. The area near the License Bureau has a large public park and the street they were on was near or in the park. As the Student was driving, he passed a police officer standing with some other people. The police officer saw the black male Student and white female Appellant proceed into an isolated area and notified a uniformed police officer to investigate the situation because there had recently been some cases of a black male raping white females in the area. The investigating officer arrived ten to fifteen minutes later and found Appellant and the Student parked on an isolated road. At that time, Appellant was in the driver's seat and the Student was on the passenger side of the car. The investigating officer testified that the Student slumped down and Appellant was leaning over as if she were pulling up her pants. Appellant testified that she was leaning over to get her driver's license out of her pocketbook because she saw the policeman approach. She made a statment that "I guess this looks rather suspicious" because she realized the police officer must have suspected something was amiss. Both the Student and Appellant testified that nothing wrong or immoral occurred. No police charges were ever filed.

The Local Board found Appellant not guilty of any charges except "The conduct of all employees at all times must be such that it will not bring discredit on the Bibb County Board of

Education nor reflect on the dignity or honor of the teaching profession." The Local Board suspended Appellant for sixty days without pay in a decision at the close of the meeting April 19, 1985. This appeal was filed May 14, 1985.

## PART III

## DISCUSSION

Appellant contends that the Local Board's finding that there was no evidence to support the charges made against her precludes a finding that she was guilty of conduct reflecting discredit on the Local Board. Appellant's argument is that if she was not guilty of any of the other alleged offenses revolving around the same factual situation, then the same facts cannot be used to find her guilty of conduct bringing discredit upon the Local Board.

The Local Board contends that Appellant made an error in judgment which reflected on the Local Board in a manner bringing discredit on the Local Board. The Local Board cites as facts that support this contention that Appellant called the Student at home to arrange a meeting at the library, that Appellant drove the Student to the Driver's License Bureau and left the Student in the car while she went in to get a driver's manual for him, that another purpose of the meeting was to question the Student and counsel him concerning rumors that existed concerning his sexual prowess with girls and his embarrassment from the

rumors, that Appellant stopped in a public place to show the Student how to relieve his discomfort by massaging his stomach, that Appellant allowed the Student to drive her car with little evidence as to his ability to drive, and that Appellant let the Student drive in an isolated and unfamiliar area. The Local Board contends that these facts support their decision and, under the any evidence rule required to be followed by the State Board of Education, the State Board of Education must affirm the decision of the Local Board. See, Ransum v. Chattooga Cnty Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty Bd. of Ed., Case No. 1976-11.

The Local Superintendent charged Appellant with violations of several rules in addition to the charge of conduct reflecting discredit on the Local Board. He charged her with immorality defined as acts contrary to good morals, acts inconsistent with the rules and principles of morality, and acts inimical to the public welfare according to the standards of a given community. He charged Appellant with violating a Local Board rule requiring teachers to provide guidance to students which will promote their proper educational development and welfare and that principals and teachers are not to serve as advisors to parents of/and children not in their class or school. He also charged her with violating a Local Board rule requiring the educator

to make reasonable efforts to protect the student from conditions harmful to learning or to health and safety, and to not use professional relationships for private advantage.

The decision issued by the Local Board found that the facts presented did not support any of the charges except the charge of conduct reflecting discredit on the Local Board. Appellant contends that this finding means that there was no evidence to support the other charges. The finding by the Local Board that Appellant was not guilty of the other charges does not mean that there was no evidence to support such a finding but rather means the Local Board did not find sufficient evidence to reach a conclusion that Appellant was guilty of those charges. However, it is certainly important that the Local Board did find that Appellant was not guilty of the other charges.

If Appellant was found not guilty of any of the charges made by the Local Superintendent relating to immoral or unhealthy conduct with a student, then the record does not reflect any evidence from which one can conclude that Appellant was guilty of conduct reflecting discredit on the Local Board. The finding of not guilty on the other charges meant that Appellant was not guilty of any acts contrary to good morals, Appellant was not guilty of any acts inconsistent with the rules and principles of morality, Appellant was not guilty of

acts inimical to the public welfare according to the standards of a given community, Appellant was not guilty of failing to provide guidance to students which will promote their proper educational development and welfare, Appellant was not guilty of failing to make reasonable efforts to protect students from conditions harmful to learning or to health and safety, and Appellant was not guilty of using professional relationships with students for private advantage. All of the charges made against Appellant revolved around one set of facts. The facts showed Appellant and the Student did meet at the library, they did drive around the park, she did touch his stomach, they did discuss sex, and they did end up in an isolated area. However, all of the findings of not guilty listed above completely remove the possibility of any immoral or illicit motive or any immoral or illicit acts. Once these findings are taken into account, the only conclusion that can be reached is that the Appellant was doing exactly what she claimed she was doing, assisting the Student in obtaining his learner's license. This does not support a finding that Appellant was guilty of conduct bringing discredit on the Local Board, especially in light of the fact that there was no testimony that any of Appellant's actions actually brought any discredit on the Local Board.

If assisting the Student in obtaining his learner's license on a Saturday and ending up in an isolated area is within the

charges of conduct bringing discredit on the Local Board, then that charge is unconstitutionally vague and overbroad as it has been applied in this case. While a charge of conduct reflecting discredit upon a Local Board is not per se unconstitutionally vague, the application of such a charge to the facts in this case does suffer from being unconstitutionally vague and overbroad. If a teacher is not supposed to be with a student, either purposefully or accidentally, in an out of the way location, then such a standard would be easy for the Local Board to adopt. The Local Board could simply prohibit such conduct. This the Local Board did not do. The Local Board chose to rely on a rule prohibiting conduct bringing discredit upon the Local board. While some types of conduct obviously would fall subject to such a rule, it is difficult to understand how the Appellant could have understood that the rule prohibiting conduct discrediting the Local Board would prohibit her from the activity she was involved in with the Student in this case, once any immoral actions are removed. The testimony of the other teachers was that they saw nothing wrong with Appellant's actions. Here, where the Local Board removed all allegations of immoral actions by virtue of its findings, the application of the rule by the Local Board was unconstitutional as being overly broad and vague. The Local Board cannot have its facts both ways. Saxby v. Bibb Cnty. Bd. of Ed., 173 Ga. App. 633 (1985).

Appellant also contends on appeal that the State Board of Education should reverse the Local Superintendent's decision to non-renew Appellant. The Superintendent made it clear that his decision not to recommend Appellant was based upon the facts involved in this case. However, the Superintendent's decision not to recommend Appellant for a teaching contract was not a matter which was an issue at the hearing before the Local Board and the Local Board made no decision in that regard. That was a decision made strictly by the Local Superintendent. The Local Board, however, did decide that "Mrs. Titus contract of employment for the 1984-85 school year, therefore, is not to be terminated as recommended."

It is unclear from the record whether Appellant had been employed by the Local Board for more than three years. If she had been employed for more than three years, then she was entitled to a notice of the reasons for her nonrenewal and the opportunity to have a hearing regarding the reasons. If the subject proceeding is deemed to have also been a hearing on Appellant's nonrenewal as well as a hearing on the Local Superintendent's recommendation of termination, then Appellant is entitled to be reinstated for the 1985-86 school year.

If, however, the hearing is deemed to have been a hearing only on the recommendation for dismissal, and if Appellant had been in her fourth year of employment, then she was entitled

to a notice and the opportunity for a hearing regarding her nonrenewal. In the absence of such a notice and an opportunity for a hearing, Appellant's nonrenewal would be contrary to law. The Local Board's failure to conduct a hearing, however, would effectively deny the State Board of Education from having jurisdiction to render a decision on Appellant's nonrenewal. Appellant's remedy would then lie in either the superior court or the federal courts.

The State Hearing Officer, therefore, concludes that the record is incomplete and the Local Board's decision is ambiguous regarding the status of Appellant's nonrenewal. If the Local Board's decision addresses Appellant's nonrenewal, then no further decision is needed, and if it did not, then the State Board of Education lacks jurisdiction to make any decision regarding Appellant's nonrenewal.

## PART IV

## CONCLUSION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that there was no evidence to support the decision of the Local Board to suspend Appellant and that, if the evidence presented did support that finding, the standard applied against Appellant was unconstitutionay overly broad

and vague. The State Hearing Officer, therefore, recommends that the decision of the Local Board suspending Appellant be reversed. The State Hearing Officer further recommends that the State Board of Education not make any decision regarding Appellant's nonrenewal either because it lacks jurisdiction or because the Local Board has already decided in Appellant's favor.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER