STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES A. WOODS,	:	
	:	
APPELLANT,	:	
	:	**CASE NO. 1991-13**
vs.	:	
	:	**DECISION**
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
APPELLEE.	:	

PART I

SUMMARY

This is an appeal by James Woods ("Appellant") from a decision by the Fulton County Board of Education ("Local Board") to dismiss him because of insubordination and other good and sufficient causes after he struck an assistant principal and a principal. Appellant claims that the Local Board's decision was arbitrary and capricious, was unsupported by the evidence, denied him due process, and violated his rights under the Soldiers' and Sailors' Civil Relief Act. Additionally, he claims that he did not have effective counsel at his hearing, and the Local Board's decision violated its own Anti-Bigotry Policy. The Local Board's decision is sustained.

PART II

FACTUAL BACKGROUND

Appellant was a tenured teacher employed by the Local Board at Woodland Middle School. On the morning of September 18, 1990, Appellant was involved in an altercation with an assistant principal at the school. Appellant struck the assistant principal in the face and broke the assistant principal's nose and displaced some of the assistant principal's teeth. He then struck the principal a glancing blow on the face that did not require any medical treatment. Appellant was suspended and a hearing was held on January 10, 1991 before a tribunal of three educators and a hearing officer.

Before the 1990-1991 school year, Appellant served as a health instructor. During the spring of 1990, the school principal circulated a memorandum that asked the teachers whether anyone was interested in serving as the In-School-Suspension ("ISS") Program teacher.

Appellant signed a form that stated that he was interested in the position. The principal talked with Appellant about the position, but decided to assign another teacher to the position even though the other teacher neither requested the assignment nor wanted to take the position. Because she did not want the position, the other teacher resigned prior to school starting. Appellant was then told that he would be assigned to the position, but another teacher was assigned shortly before school began. This second teacher remained in the position from the beginning of the school year until Friday, September 14, 1990. Appellant was then informed that he would have the position and would begin on Monday, September 17, 1990.

The Hearing Tribunal found that the altercation between Appellant and the Assistant Principal arose over Appellant's dissatisfaction with the manner in which he was assigned as the ISS teacher and his "lack of authority for making decisions regarding the operation of the ... program at Woodland Middle School." Appellant had attended a seminar on how the in-school-suspension programs were supposed to be operated. He had also prepared, and had typed at his own expense, a manual on the operation of the program at Woodland Middle School that he distributed to the principal and the two assistant principals.

In accordance with the manual, Appellant escorted the ISS students to the cafeteria for lunch on September 17, 1990. The assistant principal, Mr. Butler, came to Appellant's room after lunch and informed Appellant that he could not to take the students to the lunchroom and that they were to remain isolated from the other students throughout the day. In addition, Mr. Butler informed Appellant that he would have to make several other changes in the program.

On the morning of September 17, 1990, shortly after 7:00 a.m., Mr. Butler prepared a memorandum to Appellant that outlined the changes that Appellant had to make in the ISS program. There was conflicting testimony whether Mr. Butler placed the memorandum in Appellant's mailbox or shoved the memorandum into Appellant's stomach during a discussion outside the principal's office. Appellant testified that Mr. Butler referred to him as "Boy", which Appellant perceived to be a racial slur. In addition, Appellant testified that Mr. Butler pointed his finger in Appellant's face and refused to stop when Appellant requested him to stop. Without deciding which version of the testimony was true, the Hearing Tribunal decided that when Appellant struck Mr. Butler in the face, the blow "was clearly unwarranted under any circumstances and ... constitutes insubordination and other good and sufficient cause for discipline action."

There was also conflicting testimony whether Appellant intentionally entered the principal's office and struck her in the face, or struck her accidentally when she attempted to disengage Appellant from the assistant principal. The Hearing Tribunal again did not decide the issue, but found that the principal was struck and that the blow "was not warranted and constitutes insubordination and other good and sufficient cause for discipline action."

Shortly after Appellant was suspended, he was called to active duty in the U. S. Army when his unit was activated for Operation Desert Shield. As a result, his hearing was initially postponed. By agreement, Appellant's hearing was conducted on January 10, 1991, although Appellant was not released from active duty until January 15, 1991. Appellant was then

recalled to active duty on February 16, 1991.

The Hearing Tribunal concluded that Appellant's actions subjected him to disciplinary measures because of insubordination and other good and sufficient causes. The Tribunal recommended suspension without pay for 60 days. The Tribunal also found that the administration at Woodland Middle School was controversial and did not enjoy the support of the entire faculty; that the assistant principal was insensitive and provoked the attack, and that Appellant had cause to be angry. When the matter was presented to the Local Board on February 12, 1991, the Local Board adopted the Tribunal's findings of fact and conclusions of law, but decided to terminate Appellant's contract. This appeal then followed.

PART III

DISCUSSION

Appellant claims on appeal that (1) the Local Board's decision was arbitrary and capricious and without a rational basis; (2) the Local Board's decision was not supported by substantial evidence and was contrary to the weight of the evidence; (3) the hearing and the Local Board's order violated Appellant's rights under the Soldiers' and Sailors' Civil Relief Act; (4) the Local Board violated Appellant's due process rights by acting as both prosecutor and judge; (5) Appellant did not receive competent assistance of counsel at the hearing, and (6) the Local Board's order conflicts with its Anti-Bigotry policy.

Appellant's first two claims are that the Local Board's decision was arbitrary and capricious and without a rational basis and was not supported by substantial evidence. These claims are based on Appellant's argument that the Local Board failed to set forth any reasons why it rejected the recommendation of the Hearing Tribunal and imposed a more severe form of punishment. Additionally, Appellant argues that the Local Board adopted the Hearing Tribunal's findings and conclusions without change, but the findings and conclusions fail to establish fundamental facts that are required to make a finding that he was insubordinate or should be disciplined for other good and sufficient cause. Appellant maintains that the findings of the Hearing Tribunal establish that he was provoked by the assistant principal and did not have the requisite intent to establish insubordination. Instead, the Hearing Tribunal's findings establish that the assistant principal provoked Appellant by engaging in racial slurs and finger pointing.

The Local Board argues that the State Board of Education is bound to sustain its decision under the "any evidence" test. See, Ransom v. Chattooga Cnty. Bd. of Educ., 144 Ga. App. 783 (1978); Dunaway v. Bibb Cnty. Bd. of Educ., Case No. 1986-1 (St.Bd. of Ed., Mar. 13, 1986); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11 (St. Bd. of Ed., Sep. 8, 1976).

Although Appellant cited several cases for the proposition that the Local Board was required to set forth its reasons for imposing a more severe form of punishment upon him,[1] the cases are

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[1] Atchison. Topeka & Santa Fe RV. Co. v. Witchita Board of Trade, 412 U.s. 800, 807, 93 S. Ct. 2367, 2374, 37 L. Ed.2d 350 (1972); Georgia Public Service Commission v.

inapplicable since they were decided under the Federal Administrative Procedures Act. Local boards of education are not required to enter findings of fact in order to support their decisions. Wright v. Dodge Cnty. Bd. of Educ., Case No. 1978-4 (St. Bd. of Ed., Apr. 13, 1978); Beard v. Laurens Cnty. Bd. of Educ., Case No. 1977-14 (St. Bd. of Ed., Dec. 8, 1977). A local board of education is bound by the findings of fact made by a hearing tribunal which are supported by the evidence contained in the record of the hearing. Balthrop v. Bd. of Public Educ. for City of Savannah and the County of Chatham, Case No. 1983-20 (St. Bd. of Ed., Sep. 8, 1983), but a local board does not need to follow the recommendation of a hearing tribunal. Rabon v. Bryan Cnty. Bd. of Educ., 173 Ga. App. 507, 508 (1985). See also, Poland v.Cook Cnty. Ed. of Educ., Case No. 1977-4 (St. Ed. of Ed., 1977). Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior. A local board, however, does not need a specific rule or regulation to govern all teacher conduct. See, Calfee v. Atlanta Bd. of Educ., Case No. 1982-18 (St. Ed. of Ed., Dec. 9, 1982).

In the instant case, the Hearing Tribunal made a finding that Appellant struck both the assistant principal and the principal. Although Appellant disputed striking the principal, he did not dispute that he struck the assistant principal. The Hearing Tribunal also found that Appellant was provoked by the assistant principal. The fact that Appellant was provoked goes to mitigation, but it does not detract from the finding that Appellant struck the assistant principal. Similarly, the fact that the Hearing Tribunal did not make a decision regarding which testimony it believed is immaterial; even under Appellant's version of the events, he delivered an intentional blow to the assistant principal's face that resulted in a broken nose and displaced teeth.

Striking an assistant principal, however, does not amount to insubordination. The Local Board argues that Appellant struck the assistant principal in response to the assistant principal's directive to remain at the school. The Hearing Tribunal, however, did not make such a finding. Instead, the Hearing Tribunal found that the blow was the result of the assistant principal's provocation of Appellant. Appellant, therefore, did not refuse to obey any valid rule or order from an administrative superior. We, therefore, conclude that Appellant was not insubordinate.

There was, however, evidence to sustain the charge of "other good and sufficient cause". Whatever reasons the Local Board had for reaching its decision, violence of the nature displayed by Appellant cannot be condoned within a school system, regardless of whom it is directed against. Thus, if a teacher strikes another teacher, a student, a parent, or a superior, then the teacher can be dismissed for other good and sufficient cause. Whether they want to or not, teachers provide an example for the students within the school system. Students are subject to rules that generally provide for disciplinary measures, including expulsion, if they engage in fighting on the school campus, regardless of the circumstances. Teachers cannot expect to be held to a lesser standard. We, therefore, conclude that there was evidence to support the Local Board's decision to terminate Appellant's teaching contract for other good and sufficient cause even though Appellant was provoked by the assistant principal and even if Appellant had

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United States, 704 F.2d 538, 543 (11th Cir., 1983); People of the State of Illinois

justifiable reasons to be upset with the administration and the way he was treated.

Appellant's next claim is that the proceedings, including this appeal, have violated his rights under the Soldiers' and Holley v. Seminole County School Dist., 755 F.2d 1492 (11th Cir., 1985). We, therefore, conclude that there is no basis for reversing the Local Board's decision because it made a decision on facts presented by the administration.

Appellant next claims that he did not receive effective assistance of counsel at the hearing before the Hearing Tribunal. The Local Board points out that this claim can only be made in criminal matters. Appellant has not cited any cases to establish that he was denied due process because of the manner in which he was represented. We, therefore, conclude that this claim is also without merit.

Appellant's final claim is that the Local Board's decision conflicts with its Anti-Bigotry Policy. The policy, GAEAB/AH, was adopted on February 14, 1991. It generally prohibits acts of bigotry, including racial, sexual, ethnic or other types of slurs or insults that would tend to provoke an immediate, violent response. Notwithstanding the fact that the Anti-Bigotry Policy was adopted after the Local Board's decision was rendered in this case, the Local Board's decision does not conflict with the Policy. The Policy does not condone, sanction, or authorize an immediate violent response to an insult, nor does it provide any relief to anyone who so reacts to an insult. We, therefore, conclude that Appellant's claim of conflict does not provide him with any basis for relief.

PART IV

DECISION

Based upon the foregoing, the record and briefs submitted, the State Board of Education is of the opinion that the Local Board's decision was supported by the evidence, the Local Board acted within its authority, and its decision was not arbitrary and capricious. Accordingly, the Local Board's decision is

SUSTAINED.

This 13th day of June, 1991.