BOARD OF EDUCATION

STATE OF GEORGIA

A. J. NAULT,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1994-9**
vs.	:	
	:	**DECISION**
FULTON COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

Appellant, A. J. Nault, appealed from a decision by the Fulton County Board of Education (Local Board) to accept the recommendation of a Professional Practices Commission (PPC) Tribunal to suspend Appellant without pay from his position as a teacher based upon charges that he acted improperly and unprofessionally when he made ethnic and sexual remarks to two female students in his classes. Appellant claims that the punishment is too harsh and the Tribunal improperly accepted the students' stories rather than his because one of the students made her charges after he disciplined her in class. Based upon the "any evidence" rule, the Local Board's decision is sustained.

Following the renewal of contracts in the spring of 1993, two female students charged that Mr. Nault directed ethnic and sexual remarks to them. During the hearing before the Tribunal, Mr. Nault admitted he made the ethnic remarks while he was joking with the student and several others, but he did not consider the remark to be an ethnic slur. Mr. Nault testified he was involved in the civil rights movement during the 1960s and would not knowingly deprecate anyone's race or national origin. The Tribunal found that Appellant's reference to the student's "taco breath" was an ethnic slur.

In a separate incident, which occurred within one or two days after the ethnic slur was made, another female student called Mr. Nault a profane name in front of the class when she believed he was accusing her of turning him in for something. Mr. Nault sent her to the principal's office. The student then made accusations that Mr. Nault called her "Boobsie" and "Cleavage" on several occasions in front of other students. She also testified that she asked Mr. Nault at the beginning of the term what she had to do to make a good grade and he responded, "Just wear short tight skirts and sit in the front class and don't forget to flirt." The student who had the ethnic slur directed to her also testified that she had heard Mr. Nault refer to the other student as Boobsie and Cleavage. Mr. Nault denied he ever made such comments, or told the student she should wear short skirts. The Tribunal chose to believe the students and found that Mr. Nault had made sexual comments to the student.

On appeal, Mr. Nault claims the Tribunal should not have taken the word of the students over his word. The Tribunal, however, acted as the trier of fact and had the responsibility of weighing the evidence and deciding who presented the most credible story. In this instance, Mr. Nault admitted one incident, and there was corroborating testimony concerning the other incident. The Tribunal, therefore, could choose to place more reliance upon the students' testimony than upon Mr. Nault' s testimony.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been 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, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." Roderick J. v. Hart Cnty. Bd. of Educ., Ca Se No. 1991-14 (Ga. SBE, Aug. 8, 1991). In this case, there was evidence to support the Tribunal's decision and the Local Board's decision.

Mr. Nault also claims that he was not given enough time to prepare for the hearing because the notice was given to him only one day in advance. The record, however, shows that timely notice was sent to Mr. Nault by certified mail, but he did not pick up the mail. Additionally, at the beginning of the hearing, Mr. Nault waived any objections to the notice and stated that he wanted to proceed with the hearing.

Mr. Nault also claims that the Local Board attempted to take unfair advantage of him by not calling another student to present their case. The Local Board, however, is not under any obligation to present a case favorable to Mr. Nault. The burden of proof was upon the Local Board to prove the charges, not to anticipate Mr. Nault's desire for witnesses. Mr. Nault was told about his right to call witnesses, but he did not avail himself of the opportunity. Instead, Mr. Nault elected to proceed with the hearing and waived any objections concerning the notice.

Finally, Mr. Nault complains that the Local Board's action was too severe. "The control and management of the public schools constitutionally rests with the county board of education and such control and management will not be interfered with except where that control and management is contrary to law. See. Colson v. Hutchinson. 205 Ga. 559, 67 S.E.2d 764 (1951); Boney v. County Board of Education for Telfair County. 203 Ga. 152 (1947)." Martinius C. v. Griffin-Spalding County Bd. of Educ., Case No. 1992—12 (Ga. SBE, Jul. 9, 1992). The State Board of Education cannot substitute its judgement for that of the Local Board. In this instance, the State Board of Education concludes that the Local Board had the authority to suspend Mr. Nault for twenty days without pay and there was no violation of due process.

For the foregoing reasons, the State Board of Education is of the opinion that the Local Board's decision was supported by the evidence. The Local Board's decision, therefore, is

SUSTAINED.

This 12th day of May, 1994.

Mr. Billingslea, Mrs. King, Mr. Sessoms and Mr. Williams were not present. Mr. Lathem's seat is vacant due to his resignation effective December 31, 1993.

Robert M. Brinson
Vice Chairman for Appeals