

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID RUSHFORTH,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2000-14
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by David Rushforth (Appellant) from a decision by the Gwinnett County Board of Education (Local Board) to terminate his teaching contract under the provisions of O.C.G.A. § 20-2-940 because of insubordination, willful neglect of duty and other good and sufficient cause after Appellant failed to return to his teaching position after the Thanksgiving vacation in November 1999. Appellant failed to return to school because he was in jail on parole violation charges for driving under the influence of alcohol (DUI). Appellant claims that the Local Superintendent failed to provide him with proper notice of the charges and that there was no evidence to support the charges. The Local Board's decision is sustained.

Appellant served as a middle school technology education teacher for the Local Board. Appellant was hired in 1991. On October 6, 1999, the Forsyth County police arrested Appellant and charged him with DUI and driving without a license. Appellant, however, was already on probation from Cobb County because of a previous DUI arrest. Based upon the Forsyth County arrest, a Cobb County judge revoked Appellant's probation and he was jailed in Cobb County during the 1999 Thanksgiving vacation period.

On December 17, 1999, the Local Superintendent sent a notice to Appellant that he was submitting a termination recommendation to the Local Board because of insubordination, willful neglect of duty, and other good and sufficient cause. The charges were based on Appellant's failure to appear to teach his classes, his failure to have lesson plans available for a substitute teacher, his failure to have grades posted in his grade book, and his failure to have any record from which final grades could be prepared for his students. The notice was sent to an address that Appellant gave to the Local Superintendent after his incarceration.

The Local Board conducted a hearing on the charges made by the Local Superintendent. Evidence was received that Appellant had been convicted of DUI in Cobb County in 1998 and placed on probation. On October 6, 1999, he was arrested by the Forsyth County police and again charged with DUI. The Cobb County authorities learned about the Forsyth arrest and issued an arrest warrant that was served on Appellant during the Thanksgiving holiday. When school began after the Thanksgiving holiday, the Local Superintendent had to find a substitute

teacher to take Appellant's classes. Appellant did not have any lesson plans prepared for a substitute teacher. Additionally, Appellant had not posted his students' grades and did not have a record of their grades. Appellant's principal was unable to contact him or determine where he was located or why he had not returned to school.

On December 13, 1999, the Local Superintendent received a facsimile transmission from Appellant in which Appellant asked for a long-term leave of absence because of severe personal problems. Appellant listed 360 Rowan Court, Auburn, Georgia 30011 as his address. At the same time, Appellant sent a power of attorney to the Local Superintendent in which he listed the 360 Rowan Court, Auburn, Georgia 30011 address as his representative's address for receiving any personal information.

On December 15, 1999, the Local Superintendent learned that Appellant was incarcerated in the Cobb County jail. The Local Superintendent then issued the notice to Appellant at the 360 Rowan Court, Auburn, Georgia 30011 address that a recommendation would be made to terminate Appellant's teaching contract.

At the conclusion of the hearing, the Local Board voted to accept the Local Superintendent's recommendation and voted to terminate Appellant's teaching contract. Appellant then appealed to the State Board of Education.

On appeal to the State Board of Education, Appellant claims that the notice of charges was improperly mailed to the wrong address. He claims that the Local Superintendent knew that he was in jail before sending the termination letter and, therefore, should have sent the letter to the Cobb County jail. O.C.G.A. § 202-2-940(c) provides that, "Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope." The last address provided by Appellant was the 360 Rowan Court address, which was the address used by the Local Superintendent. Appellant is estopped from making the argument that the Local Superintendent should have sent the notice to the Cobb County jail simply because the Local Superintendent learned, through no effort by Appellant, that Appellant was in jail. Appellant told the Local Superintendent to use the 360 Rowan Court for all communications to him and the Local Superintendent relied upon this direction. The State Board of Education, therefore, concludes that the Local Superintendent properly mailed notice of the charges and hearing to Appellant.

Appellant also claims there was insufficient evidence to support the charges because there was no evidence that he intentionally failed to return to school. This argument is wholly without merit. While Appellant may not have wanted to spend any time in jail, his incarceration was a natural consequence of his intentional decision to drive while under the influence of alcohol. Additionally, the fact that Appellant did not have lesson plans available for a substitute teacher is evidence that Appellant made an intentional decision not to follow the directions of his principal to always have emergency lessons plans available. There was also evidence that Appellant failed to maintain records from which grades for his students could be determined. This was further evidence of Appellant's intent. The State Board of Education concludes that

there was evidence that Appellant willfully failed to follow the directions of his principal, and willfully engaged in unprofessional conduct.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant due process and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of June 2000.

Bruce Jackson
Vice Chairman for Appeals