STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALAINE BOWMAN,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2002-31**
	:	
BIBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Alaine Bowman (Appellant) from a decision by the Bibb County Board of Education (Local Board) to terminate her teaching contract after a tribunal found that she had improperly touched her kindergarten students after her principal warned her to avoid unnecessary touching. Appellant claims she was denied due process because the tribunal recommended a ten-day suspension without pay and there was no evidence that she improperly touched her students. The Local Board's decision is sustained.

On October 12, 2001, Appellant's paraprofessional reported that Appellant had scratched a student's neck when she forced him to place his head on his desk. The paraprofessional did not observe the incident because she was out of the classroom, but upon her return, she observed the student crying and saw the scratch on the side of his neck. The paraprofessional called a counselor, who also observed the scratch and treated it with an antiseptic. Appellant apologized to the student.

On October 23, 2001, Appellant took a watch from another student. In the process, she scratched the student's face. The paraprofessional observed the scratch and also reported the incident on the following day. During the afternoon of October 23, 2001, Appellant met with the Local Superintendent regarding the October 12 incident and was told that she should not be touching her students in a forcible manner. At the end of the conference, the Local Superintendent asked Appellant if there were any other incidents she wanted to talk about. Appellant failed to say anything about the incident that occurred in the morning when she took the watch away from one of her students.

When the Local Superintendent learned about the October 21 incident, she determined that she was going to recommend Appellant's suspension without pay for ten days. A hearing was held before a tribunal on the charges that Appellant had improperly touched her students. The tribunal followed the Local Superintendent's recommendation to suspend Appellant without pay for ten days. Appellant then appealed to the Local Board. The Local Board decided to terminate Appellant's teaching contract. Appellant then appealed to the State Board of Education.

Appellant claims that there was no evidence that she improperly touched the students. She claims that the hearing officer improperly admitted hearsay testimony about what the students said and, without the hearsay testimony, no evidence exists that Appellant injured either of the students. Hearsay evidence, however, is admissible in administrative hearings if it is supported by other evidence. *See, Sherry B. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1995-41 (Ga. SBE, Nov. 9, 1995). In the instant case, there was other evidence available to support the hearsay testimony. The paraprofessional observed the scratches on both of the children and the counselor observed the scratch on the student on October 12, 2001. Additionally, Appellant admitted that she had placed her hand on the student on October 12, 2001 and she had taken a watch from the student on October 23, 2001. The hearing officer, therefore, did not err in allowing the hearsay testimony.

Appellant also claims that the Local Board is estopped from terminating her contract because the Local Superintendent and the tribunal merely recommended a 10-day suspension without pay. This issue was addressed in *Tookes v. Atlanta City Bd. of Educ.*, Case No. 2001-40 (Ga. SBE, July 12, 2001) where the State Board of Education decided that the local board was not estopped from dismissing an employee when both the local superintendent and a tribunal recommended suspension. Appellant claims that *Tookes* is distinguishable from her situation because the employee in *Tookes* was charged with sexual harassment and the sexual harassment policy provided for dismissal. Appellant, however, reads too much into the facts of the *Tookes* case.

> The essential question raised by Appellant is whether a local board of education can impose a greater punishment than recommended by the local superintendent or by a tribunal. If a local board is bound by the recommendation of either the local superintendent or a tribunal, then the recommendation is not a recommendation. Instead, the local board would be reduced to either approving the sentence or reversing it.

Id. The discussion of the sexual harassment policy referred to whether the employee had notice of the possibility of termination. The State Board of Education thus concludes that the Local Board was not estopped from terminating Appellant because of the recommendation of the Local Superintendent and the tribunal.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision, the hearing officer did not err in allowing hearsay evidence to be introduced, and the Local Board was not estopped to dismiss Appellant. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of July 2002.

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Cathy Henson
Chairperson, State Board of Education