STATE BOARD OF EDUCATION

STATE OF GEORGIA

SHERRI JONES,	:	
	:	
Appellant,	:	**CASE NO. 2010-22**
	:	
vs.	:	
	:	
METROPOLITAN REGIONAL	:	
EDUCATIONAL SERVICE	:	**DECISION**
AGENCY BOARD OF CONTROL,	:	
	:	
Appellee.		

This is an appeal by Sherri Jones (Appellant) from a decision by the Metropolitan Regional Educational Service Agency Board of Control (Agency) to terminate her teaching contract because of other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the tribunal's decision, evidence of actions taken before her contract was renewed was improperly admitted, she was denied due process because a hearing was not granted to her within ten days after she was placed on administrative leave, and the tribunal's decision was arbitrary and capricious. The Agency's decision is SUSTAINED.

The Agency employed Appellant as a special education teacher. On October 21, 2008, an autistic student in Appellant's classroom recorded her while she was reading an advice column in a magazine in which the author used the word "penis", which was read aloud by Appellant. The student's parent had hidden the recorder on the student because of some concerns about how her child was being treated in the classroom. An unidentified voice was recorded saying, "hit". The student's parent brought the recording to the attention of the Program Coordinator, who serves in the same capacity as a school principal, and claimed that the student had been hit while in the classroom. School personnel, the Department of Family and Children Services, and law enforcement conducted an investigation of the incident. A detective played a portion of the recording to school personnel in an attempt to identify who said the word, "hit".

The recording also contained a section where the student was heard crying and a paraprofessional asked why he was crying. Appellant responded that the student was eating a piece of pizza that he had taken from the trash can and began crying when she took it away from him. Appellant then said, "I mean, he was chill [sic], finger lickin' [sic] good. He was chillin' [sic] with that". Both the Department of Family and Children Services and the police closed their investigations without any adverse findings against Appellant and she continued with her teaching duties.

The student's parent requested a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400 *et seq.*, as amended. The hearing was

held before an administrative law judge at the end of March 2009. On April 2, 2009, the Agency offered, and Appellant accepted, a new contract for the 2009-2010 school year. On or about May 14, 2009, the administrative law judge issued a decision in the due process matter and the decision was received by the director of the North Metro Program In the decision, the administrative law judge recited that Appellant had read aloud an article from Essence that contained the word "penis". A local television station ran a story about Appellant's comments. Upon receipt of the administrative law judge's decision, the Agency's director placed her on administrative leave for five days until the end of the school year for students. The Appellant returned to school from post-planning on or about May 25, 2009.

On July 15, 2009, Appellant was informed that her contract would be terminated and she was charged with insubordination, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because she had read the article aloud in front of her students and made demeaning comments about the student eating pizza. At Appellant's request, a hearing was conducted on the charges before a three-member tribunal. Appellant admitted she had made the comments but claimed that she had merely made a mistake. The tribunal recommended the termination of Appellant's contract for other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. The Agency adopted the recommendation and terminated Appellant's contract. Appellant then appealed to the State Board of Education.

Appellant claims that the Agency's decision was improperly based upon incidents that happened in the previous school year and that such evidence should not have been admitted. Appellant also claims that since the Agency failed to provide her a hearing within ten days after she was placed on administrative leave, the Agency's decision should be reversed under the provisions of O.C.G.A. § 20-2-940(g). Additionally, Appellant claims that the Agency's decision to dismiss her for other good and sufficient cause is arbitrary and capricious because there was no showing that her ability to teach has been adversely impacted by her comments.

Appellant's first argument is that there is no evidence to support the Agency's decision because the only evidence introduced related to activities that occurred under her previous contract and should not, therefore, have been admitted into evidence. In *Peterson v. Brooks Cnty. Bd. of Educ.*, Case No. 1990-29 (Ga. SBE, Dec. 13, 1990), *rvsd. on other grounds, Brooks Cnty. Bd. of Educ. v. Peterson, Ronald*, CA # 91-CV-43 (Brooks Cnty. Superior Ct., Aug. 2, 1991), the State Board of Education said, "Evidence of incidents that occurred before a contract renewal can be presented for the purpose of establishing a course of conduct, but such incidents cannot be used to recommend against renewal in a subsequent year." If, however, a school system is unaware of the misconduct when a contract is renewed, then prior conduct can be used as a basis for terminating a teacher's contract. *Scott v. Liberty Cnty. Bd. of Educ.*, Case No. 2007-23 (Ga. SBE, Mar. 8, 2007). In the instant case, school administrators testified they were unaware Appellant had read the magazine article because they did not hear the entire recording and they were concentrating on whether the student had been hit. Although Appellant argues that the Agency should have been aware of her reading because they could have insisted on hearing the entire recording, the question is whether there was actual awareness. There was evidence that the Agency was unaware that Appellant had read the magazine article

aloud in class at the time her contract was renewed. Admission of the evidence that Appellant read the article in the classroom was, therefore, admissible.

Appellant also claims that there was no evidence to support the charge of other good and sufficient cause. "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.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

Any other good and sufficient cause "is limited to actions taken (or not taken) by an employee that adversely impact on the employee's ability to be effective." *Cooper, et al. v. Atlanta City Bd. of Educ.*, Case No. 2005-08 (Ga. SBE, Nov. 10, 2004), *aff'd., Atlanta Independent School System v. Berto, et al.*, Civil Action Nos. 2004CV94309 and 2004CV94312 (Fulton Sup. Ct., Aug. 25, 2005). In the instant case, the tribunal found that reading aloud from a magazine that discussed the size of a man's penis in front of children who could overhear what was being read was inappropriate and unprofessional. The tribunal also found that Appellant only admitted to reading the article aloud during class time when she was "confronted with the tape recording". Moreover, three of the Agency's administrators testified that it was their opinion that Appellant could not be an effective teacher. The Director of the North Metro Program testified that "[Appellant] should no longer be an instructor for the [Agency]. I believe that the comments [were] unconscionable, and that they should not have been uttered in front of the students, that it was an action which would render her ineffective." Therefore, the State Board of Education concludes that there was some evidence to support the Local Board's decision.

Appellant also claims that the Agency's decision should be reversed because the Agency violated O.C.G.A. § 20-2-940(g) by not giving her a hearing within ten working days after she was placed on administrative leave. O.C.G.A. § 20-2-940(g) provides that a teacher can be temporarily relieved from duty by the superintendent for up to ten working days, "and during such period it shall be the duty of the local board to conduct a hearing on the charge...." The Agency argues that O.C.G.A. § 20-2-940(g) is inapplicable since the teacher was on administrative leave for only five days and not beyond ten days. The Agency, however, misreads the statute. The statute does not permit a suspension, or relief from duty, for up to ten days without a hearing. Instead, ten days is the limit on the length of a suspension; a suspension cannot extend beyond ten days, during which time a hearing has to be held on the charge or charges that resulted in the relief from duty.

In the instant case, however, Appellant failed to request a hearing when she was relieved of her duties and did not request a hearing until she was given notice that her contract would be terminated because of the incidents that occurred throughout the school year. If a teacher fails to request a hearing when relieved from duty and waits until a hearing is conducted regarding the termination of the teacher's contract before raising the issue, the teacher is deemed to have waived the right to a hearing. *See also Lynn v. City of Atlanta Bd. of Educ.*, Case No. 1997-41 (Ga. SBE, Feb. 12, 1998); *Hollins vs. Cobb Cnty.*

Bd. of Educ., Case No. 2010-31. Appellant, therefore, waived her right to a hearing within the 10-working-day period provided for under O.C.G.A. §20-2-940(g).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the finding that there was good and sufficient cause to terminate Appellant's teaching contract and Appellant was not denied any of her procedural due process right. Accordingly, the Agency's decision is SUSTAINED.

This _____ day of February 2010.

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William Bradley Bryant
Vice Chairman for Appeals