

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

RANDOLPH FORDE,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-52
	:	
CLAYTON COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Randolph Forde from a decision by the Clayton County Board of Education (“Local Board”) to terminate his employment contract on the grounds that he violated the Standards of The Code of Ethics for Educators. The Local Board concluded that Appellant’s employment contract was properly terminated pursuant to O.C.G.A. § 20-2-940(a)(5) and (8) for willful neglect of duties and other good and sufficient cause.

Appellant asserts two errors on appeal: (1) the Local Board erred because Appellant was denied due process, and (2) the Local Board erred because the decision is not supported by the record. For the reasons set forth below, the decision of the Local Board is sustained.

I. PROCEDURAL BACKGROUND

On or about October 28, 2009, Appellant was notified that his annual contract for the 2009-2010 school year was being recommended for termination. Appellant was provided notice of the charges and a hearing date of November 17, 2009. The hearing was later rescheduled for December 8, 2009. The record does not indicate whether the hearing was rescheduled at the request of the Local Board, the Appellant, or with the consent of the parties. On December 8, 2009, the Local Board provided the Appellant a hearing with the opportunity to present evidence. Prior to the December 8, 2009 hearing, Appellant did not object to the hearing date or the rescheduled hearing date. Appellant did not appear for his hearing, but appeared through his legal counsel. After hearing the evidence, the hearing tribunal recommended that Appellant’s contract be terminated. The Local Board adopted the tribunal’s recommendation and terminated Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was employed by the Local Board for the 2009-2010 school year as a teacher at Mundy Mill High School. On or about October 9, 2009, a student alleged that Appellant offered him money to “put a hit” on another student. On or about October 10, 2009, the teacher was arrested for making terroristic threats. On October 15, 2009, Appellant signed an agreement to be placed on administrative leave with pay until directed to report back. The Local Board investigated the allegations and determined that Appellant had violated The Code of Ethics for Educators. At the hearing, the first student testified that Appellant had asked him if he was gay. The first student further testified that Appellant stood in front of him for several minutes and told him that he would hit him in the mouth. The second student testified that Appellant approached him on the bus and offered him money to put a hit on the first student.

III. ERRORS ASSERTED ON APPEAL

A. Due Process.

Appellant asserts that the Local Board violated his due process rights because he was not provided a hearing within ten (10) working days after being placed on administrative leave. Specifically, Appellant contends that by placing Appellant on administrative leave, the Local Board relieved him from duty pursuant to O.C.G.A. § 20-2-940(g). Thus, Appellant contends that since he was not provided a hearing within ten (10) working days after being placed on administrative leave with pay that his due process rights were violated.

Therefore, the issue before this Board is whether a Local Board can place a teacher on administrative leave with pay prior to notifying the teacher of charges pursuant to O.C.G.A. § 20-2-940(b). For the reasons set forth below, this Board concludes that O.C.G.A. § 20-2-940(g) is not triggered when a Local Board places a teacher on administrative leave with pay before notifying the teacher of charges and a pending hearing.¹

Appellant first contends that his due process rights were violated by being placed on administrative leave with pay. Constitutional due process only requires that a local board provide notice and an opportunity to respond before a “legitimate claim of entitlement” is taken away. See Hinson v. Clinch County Bd. of Educ., 231 F.3d 821, 832 (11th Cir. 2000); Hatcher v. Board of Public Educ., 809 F.2d 1546, 1551-52 (11th Cir. 1987); Cleveland Bd. of Educ. v.

¹ Appellant relies on this Board’s decision in Nathan Grigsby v. City of Atlanta Bd. of Educ., Case No. 1996-24 (Ga. SBE, Sep. 1996). In response, the Local Board cites Hollins v. Cobb County Bd. of Educ., Case No. 2010-31 (Ga. SBE, Jan. 2010) and Lynn v. City of Atlanta Bd. of Educ., Case No. 1997-41 (Ga. SBE, Feb. 1998).¹ These decisions and subsequent decisions relying upon them are overruled to the extent they are inconsistent with this Board’s decision today.

Loudermill, 470 U.S. 532, 538, 105 S. Ct. 1487 (1985). Whether Appellant has a “legitimate claim of entitlement” by being removed from his position and placed on administrative leave with pay is governed by the statutory definitions under Georgia law. Loudermill, 470 U.S. at 538-39; Hatcher, 809 F.2d at 1552.

O.C.G.A. § 20-2-940(a) provides the process a teacher is entitled to under Georgia law for suspensions, terminations, and demotions. The Fair Dismissal Act does not provide a teacher with a “legitimate claim of entitlement” when placed on administrative leave with pay. In this case, the Local Board did not suspend, demote, or terminate Appellant from employment before providing him with due process. Thus, this Board finds that placing Appellant on administrative leave with pay prior to proposing charges and providing Appellant a hearing did not violate Appellant’s due process rights.²

Appellant further contends that the Local Board violated his due process rights because, by being placed on administrative leave, he was temporarily relieved of duty as defined by O.C.G.A. § 20-2-940(g). Thus, Appellant contends that once he was placed on administrative leave, he was entitled to a hearing within ten (10) working days. For the reasons set forth below, this contention is not supported by the language contained in O.C.G.A. § 20-2-940(b) and (g).

O.C.G.A. § 20-2-940(g) states in pertinent part:

The superintendent of a local school system may temporarily relieve from duty any teacher, principal, or other employee having a contract for a definite term for any reason specified in subsection (a) of this Code section, pending hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. In any such case, the superintendent shall notify the teacher or employee in writing of such action, which notice shall state the grounds thereof and shall otherwise comply with the requirements of the notice set forth in subsection (b) of this Code section. Such action by the superintendent shall not extend for a period in excess of ten working days, and during such period it shall be the duty of the local board to conduct a hearing on the charges in the same manner provided for in subsections (e) and (f) of this Code section, except that notice of the time and

² This conclusion is supported by both Georgia and federal case law interpreting whether a job transfer is a “legitimate claim of entitlement” under O.C.G.A. § 20-2-942(b)(2) and § 20-2-943(a)(2)(C). See Hamilton v. Telfair County School Dist., 265 Ga. 304 (1995) (upholding the denial of a writ of mandamus seeking to compel local board to conduct a hearing because teacher was not demoted); Hinson, 231 F.3d at 832 (“legitimate claim of entitlement” did not exist because demotion under Georgia law did not occur); Hatcher, 809 F.2d at 1551-52 (“legitimate claim of entitlement” existed because demotion under Georgia law occurred).

place of hearing shall be given at least three days prior to the hearing. During the period that the teacher or other employee is relieved from duty prior to the decision of the local board, the teacher or employee shall be paid all sums to which he is otherwise entitled. If the hearing is delayed after the ten-day period as set out in this subsection at the request of the teacher or employee, then the teacher or employee shall not be paid beyond the ten-day period unless he is reinstated by the local board, in which case he shall receive all compensation to which he is otherwise entitled. (emphasis added).

O.C.G.A. § 20-2-940(g) first refers to O.C.G.A. § 20-2-940(a), which provides for the grounds to terminate or suspend a teacher. O.C.G.A. § 20-2-940(g) next refers to O.C.G.A. § 20-2-940(b), which provides that “[b]efore the discharge or suspension of a teacher, principal, or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing. . . .” (emphasis added).

Thus, a suspension under O.C.G.A. § 20-2-940 contemplates a suspension without pay. O.C.G.A. § 20-2-940(g) allows the superintendent to temporarily relieve an employee with pay once the employee has been notified of a “pending hearing” of the “charges.” If an employee has not been notified of a pending hearing of charges pursuant to O.C.G.A. § 20-2-940(b), then the requirements of O.C.G.A. § 20-2-940(g) do not apply. In other words, the “charges” and “pending hearing” do not exist until a local board proposes the charges for a hearing. Once written notice of the charges and a pending hearing occur, a local board must return the employee to duty, and provide a hearing under O.C.G.A. § 20-2-940(b).

Alternatively, a local board may temporarily relieve a teacher from duty with pay under O.C.G.A. § 20-2-940(g) by providing a hearing within ten (10) working days. See Hobson v. Rockdale County Bd. of Educ., Case No. 2010-44 (Ga. SBE, April 2010). In doing so, a local board must determine that the charges are of “such [a] seriousness [nature] or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel.”

Appellant contends that, once he was placed on administrative leave, he was temporarily relieved of duty and entitled to a hearing within ten (10) working days. This contention is based upon an erroneous reading of O.C.G.A. § 20-2-940(g) as a separate provision from O.C.G.A. § 20-2-940(b). As set forth above, O.C.G.A. § 20-2-940(g) is only triggered once an employee is notified of a hearing and charges. Any other reading of O.C.G.A. § 20-2-940(g) would mean that a local board could never place a teacher or employee on administrative leave with pay pending an investigation without providing a hearing under the Fair Dismissal Act. Such a reading would lead to the absurd conclusion that if a teacher or employee is cleared of wrongdoing while on administrative leave with pay pending an investigation, the local board would be required to provide a hearing. Based upon the above, this Board concludes that

O.C.G.A. § 20-2-940(g) did not require the Local Board to provide Appellant a hearing within ten (10) working days after Appellant was placed on administrative leave with pay.

However, once Appellant received notice of the charges and remained on administrative leave with pay, O.C.G.A. § 20-2-940(g) was triggered, thereby requiring the local board to follow the requirements of O.C.G.A. § 20-2-940(g).³ Appellant's notice letter was sent on October 28, 2009 with a hearing date of November 17, 2009. Consequently, Appellant was entitled to a hearing by November 11, 2009. The Local Board erred by not providing Appellant a hearing within ten (10) working days. However, Appellant does not assert as error that the October 28th notice letter did not provide him with a hearing within ten (10) working days.

Furthermore, Appellant's hearing was rescheduled for December 8, 2009. The record is unclear as to whether the hearing was rescheduled at the request of the Local Board, the Appellant, or with the consent of the parties. Again, Appellant does not assert as error that the rescheduling of the hearing to December 8, 2009 violated his rights. Thus, these issues are not properly before this Board.

Even assuming these issues were before the Board, the Local Board contends⁴ that Appellant waived his rights to a hearing within ten (10) working days because, once Appellant was notified of the charges, Appellant never objected or asserted that he was entitled to a hearing

³ Once the notice of charges and hearing were provided to Appellant, the Local Board was required to return Appellant to duty or "temporarily relieve" Appellant from duty by making a determination that the charges were of such a seriousness nature or other circumstances existed as defined by O.C.G.A. § 20-2-940(g). The notice letter sent by the Local Board does not include such a determination. Appellant does not challenge such a conclusion, and, in fact, his argument is based on the premise that O.C.G.A. § 20-2-940(g) applies. Nevertheless, the Local Board erred by relieving Appellant from duty and not making this determination as required by O.C.G.A. § 20-2-940(g). See Hobson, Case No. 2010-44 (Ga. SBE, April 2010). However, Appellant does not assert the Local Board's failure to make this determination as error on appeal, and therefore this issue is not before this Board.

⁴ The Local Board further contends that Appellant waived his right to a hearing within ten (10) working days because he signed an agreement to be placed on administrative leave. However, the agreement was signed prior to the Local Board notifying Appellant of the charges against him. Thus, Appellant could not have waived his rights under O.C.G.A. § 20-2-940(g) before the Local Board notified Appellant of the charges. As set forth above, a waiver of due process rights requires a voluntary and knowing action that one is waiving certain rights. See Brown v. Georgia Dep't of Revenue, 881 F.2d 1018, 1028 (11th Cir. 1989) (no waiver of due process rights where employee did not receive notice of his hearing rights); Hobson, Case No. 2010-44 (Ga. SBE, April 2010). The administrative leave agreement does not provide notice of what rights are being waived. Thus, the Board finds that the administrative leave agreement is insufficient to constitute a waiver of Appellant's due process rights.

within ten (10) working days. A waiver of due process rights requires a voluntary and knowing action that one is waiving certain rights. See Brown, 881 F.2d at 1028. Furthermore, in the context of a right to a jury trial, the Georgia courts have held that a party may waive its right to a jury trial by allowing the bench trial to proceed without objection, or by conduct indicative that the right is not asserted. See Cole v. ACR/Atlanta Care Remarketing, Inc., 295 Ga. App. 510, 512 (2008); SurgiJet, Inc. v. Hicks, 236 Ga. App. 80, 81 (1999); Fine v. Fine, 281 Ga. 850, 851 (2007). Applying this rationale to this case, Appellant clearly waived his right to object to the timeliness of the hearing.

In this case, after Appellant received the notice of charges, he failed to object to the hearing date and the rescheduled hearing date. Appellant then participated in the rescheduled hearing. At the end of the hearing, Appellant objected for the first time, and then only objected to his hearing date based upon not being provided a hearing within ten (10) working days from the date he was placed on administrative leave. Appellant knew since approximately October 28, 2009 that he had not been given a hearing within ten (10) working days of the notice of charges. Appellant chose to proceed with the hearing and failed to object to it. This Board finds that after Appellant received the October 28th notice of charges with a hearing date beyond ten (10) working days, he was required to assert that his rights were being violated. Thus, this Board concludes that Appellant's failure to do so constitutes a waiver of his right to a hearing within ten (10) working days under O.C.G.A. § 20-2-940(g).

B. Evidence supports the decision.

The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). Appellant does not seriously question that the decision of the Local Board is supported by the record. Moreover, the Board finds that the record contains sufficient evidence showing that Appellant violated the Standards of The Code of Ethics for Educators. Thus, the Local Board's decision to terminate Appellant for willful neglect of duties, and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(5) and (8) is supported by the record. See Brawner v. Marietta City Bd. of Educ., 285 Ga. App. 10, 646 S.E.2d 89 (2007); Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986); Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008).

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This _____ day of May 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS