STATE BOARD OF EDUCATION
STATE OF GEORGIA

DENNIS WRIGHT,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO. 2010-75**
	:	
POLK COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by Dennis Wright from a decision by the Polk County Board of Education ("Local Board") to terminate his employment contract on the grounds that he engaged in immoral, unprofessional, unethical, and inappropriate behavior towards female students, and, on one occasion, to a female teacher. The Local Board terminated Appellant's employment contract pursuant to O.C.G.A. § 20-2-940(a)(2), (3), (4), and (8) on the grounds of insubordination, willful neglect of duty, immorality, and other good and sufficient cause.

Appellant asserts two errors on appeal: (1) the Local Board erred by allowing the admission of two letters which are unrelated to the charges in this case and the letters are hearsay, 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 February 3, 2010, Appellant was notified that his annual contract for the 2009-2010 school year was being recommended for termination. Appellant appealed the termination of his employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board 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 Cedartown Middle School. In approximately November of 2009, the school administration received complaints from a student that Appellant was looking down several girls' shirts, looking at girls' bottoms, winking at girls, staring at girls, and making them feel uncomfortable. In addition, the school administration was informed by a female teacher of an inappropriate comment by Appellant about taking her home with him.

At the hearing, four female students testified that Appellant looked down girls' shirts, looked at girls' bottoms when they were called to the front of the class to do a problem, winked at girls, stared at girls, and made them feel uncomfortable. The female teacher testified about her discussion at the open house in which Appellant made a statement about taking her home with him, which she felt had a sexual connotation, was inappropriate, and made her uncomfortable. Appellant testified at the hearing and denied engaging in misconduct. Appellant testified that he suffers from Post Traumatic Syndrome and that he takes medication that causes his eyes to stare and fixate.

III. ERRORS ASSERTED ON APPEAL

A. Admission of Evidence of Directives from Prior Years.

Appellant's primary contention[1] is that the Local Board erred by allowing two letters issued to Appellant by administrators of the Local Board. The first letter was issued by the current Superintendent to Appellant approximately three (3) years earlier. The Superintendent testified at the hearing and identified the letter. The second letter was written approximately four (4) years earlier, and was issued by the former Superintendant to Appellant. The former Superintendant did not testify at the hearing.

[1] At oral argument, Appellant asserted that the Local Board erred by admitting the testimony of a former Principal at Rockmart Middle School regarding the circumstances which led to the directive she issued to Appellant to ensure that he did not make students feel uncomfortable. This testimony related to this prior directive given to Appellant is admissible evidence. It appears that Appellant's objection was to the background testimony of how the complaint came to the former Principal and the nature of the complaint. However, this background is admissible evidence to show the former Principal's course of conduct, which led to the directive she issued to Appellant. Furthermore, the student who made the complaint testified at the hearing and was subject to cross-examination.

On appeal, Appellant contends both letters are hearsay and are unduly prejudicial.[2] The Local Board contends that the letters were properly admissible to show prior directives issued to Appellant ordering him to treat students in a professional manner. The Local Board further contends that evidence of the prior directive is relevant to establish the insubordination charge against the Appellant.

Since the Local Board carries the burden to prove Appellant's insubordination and misconduct, these two letters were offered to prove the truth of the matter asserted in the letters. Hurston v. State, 194 Ga. App. 226 (1990). Thus, these letters are out-of-court statements containing statements by persons who were unavailable for cross-examination. See L.S. v. Carrolton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007); see also McGahee, 214 Ga. App. at 474. However, the hearing officer admitted both letters only for the limited purpose of establishing the directive issued to Appellant. This Board finds that the hearing officer properly limited the admission of the two letters for this purpose.[3] Thus, the only issue is whether the directive contained in the letter constitutes hearsay.

In regards to the first letter, this Board concludes that it was properly admitted into evidence and it does not constitute hearsay. The letter was issued by the current Superintendent who identified the letter and was available for cross examination regarding the letter. Moreover, the letter was admitted into evidence for the limited purpose of establishing the directive issued

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[2] The Local Board contends that Appellant did not assert an objection based upon the grounds that the letters were unduly prejudicial. Thus, the Local Board contends that this objection was not raised before the hearing officer, and, therefore, cannot be raised on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga . SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983). The State Board agrees with the Local Board. Moreover, for the reasons set forth herein, the Local Board finds that the letters were properly admitted into evidence for the limited purpose of proving the directives issued to Appellant. Appellant asserts that prejudice exists because the hearing tribunal deliberated and then requested to see the letters. However, the hearing tribunal is entitled to see the evidence admitted. See Dunagen v. Elder, 154 Ga. App. 728, 729 (1980). For these reasons, this assertion is without merit.

[3] This Board has previously found that prior incidents "can be presented for the purpose of establishing a course of conduct." See Moulder v. Bartow County Bd. of Educ., 267 Ga. App. 339 (2004). In Moulder, the Georgia Court of Appeals upheld this Board's conclusion that a local board could not terminate an employee under the Fair Dismissal Act "based solely on events that occurred before the contract was issued." Id. at 343. Thus, under Moulder, prior incidents can be presented to establish a course of conduct. In this case, the Local Board only used the prior incidents to establish the directive issued to Appellant. Thus, based upon Moulder, this Board concludes that using prior directives issued to Appellant was proper.

to Appellant by the current Superintendent. Thus, this letter was properly admitted into evidence.

In regards to the second letter, this Board also concludes that it was properly admitted into evidence and it does not constitute hearsay as it is a business record. Pursuant to O.C.G.A. § 24-3-14, records made in the regular course of business are admissible into evidence. The record shows that the second letter was maintained in the Appellant's personnel file. Appellant asserted at the hearing that the Local Board did not meet the requirements of the business records exception. However, Appellant has failed to identify how the second letter does not meet this hearsay exception. Moreover, the business record exception "shall be liberally interpreted and applied." O.C.G.A. § 24-3-14(d).

Finally, even assuming the Local Board erred in admitting the two letters, the admission of this evidence was harmless error. M.H. v. Gwinnett Cnty. Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000). Evidence of the prior directives were presented through the testimony of the current Superintendent and Appellant's former Principal. Furthermore, the two letters only pertain to the charge of insubordination. Thus, the record contains admissible evidence regarding the directives issued to Appellant and evidence supporting the other charges against Appellant.

B. Record Evidence.

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).

In this case, four female students testified that Appellant looked down girls' shirts, looked at girls' bottoms when they were called to the front of the class to do a problem, winked at girls, stared at girls, and made them feel uncomfortable. A female teacher testified about her discussion at the open house in which Appellant made a statement about taking her home, which she felt had a sexual connotation, was inappropriate, and made her uncomfortable. Appellant testified that he suffers from Post Traumatic Syndrome and that he takes medication that affects his eyes to stare and fixate.

The hearing tribunal heard this evidence and found the students and teacher to be credible. Thus, the Local Board's decision to terminate Appellant for insubordination, willful neglect of duty, immorality, and other good and sufficient cause under O.C.G.A. § 20-2-940(a) 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 July 2010.

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MARY SUE MURRAY
VICE CHAIR FOR APPEALS