

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JENNY O. SCARBOROUGH,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2011-17
	:	
BIBB COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Jenny O. Scarborough from a decision by the Bibb County Board of Education (“Local Board”) to terminate her employment contract for the 2010-2011 school year. The Local Board terminated Appellant’s employment contract pursuant to O.C.G.A. § 20-2-940 finding that she had engaged in willful neglect of duty. On appeal, Appellant contends that (1) the Local Board erred by allowing and relying upon hearsay evidence, and, (2) that the Local Board erred because the evidence does not support the decision. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

On or about May 6, 2010, Appellant was notified that her annual contract for the 2010-2011 school year was being recommended for termination. Appellant appealed the termination of her employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence before a hearing tribunal. After hearing the evidence, the tribunal recommended the termination of Appellant’s contract. The Local Board adopted the recommendation of the hearing tribunal. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

During the 2009-2010 school year, Appellant was employed by the Local Board as a Counselor at Rutland High School (“Rutland”). Thomas Bates, the Career Tech Teacher at Rutland, requested Appellant to chaperone the February 3, 2010, DECA Club trip to Orlando, Florida. Appellant agreed to do so and was responsible for chaperoning the female students. On the last night of the trip, Appellant and Bates, along with two other students, attended the Cirque Du Soliel show. The remaining students were given the option to attend the show, go to the park, or remain in their hotel room. Some of the students chose not to

attend the show. Instead, a group of students stayed at the hotel and allegedly obtained alcohol and engaged in sexual activity. One of the students later alleged she was raped.

At the hearing, the Investigator for the Local Board testified about the information the Local Board received several weeks after the trip regarding the students drinking and engaging in sex. The Local Board offered evidence showing that the Appellant left the students unattended while she went to the Cirque Du Soliel show for approximately 3 hours. Appellant admitted that she was issued a teacher handbook which provided that she was not allowed to leave students unsupervised. Appellant admitted that she was a chaperone on the trip and that she left approximately 17 students unsupervised for approximately 3 hours while she attended the Cirque Du Soliel show.

III. ERRORS ASSERTED ON APPEAL

A. Admission of Hearsay Evidence.

Appellant contends that the testimony of the Investigator regarding statements made to her by the students in the course of her investigation is hearsay. Hearsay evidence has no probative value and cannot be used to establish any fact in an administrative hearing. See McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 474 (1994). Thus, since the Local Board has the burden of proof in seeking to dismiss a teacher, hearsay evidence cannot be relied upon. O.C.G.A. § 20-2-940(e)(4).

In the case sub judice, the Local Board offered into evidence statements made by students who did not testify. These statements are hearsay and the Local Board cannot rely on hearsay to meet its burden of proof. O.C.G.A. § 20-2-940(e)(4). However, the hearsay statements at issue did not form the basis of the charges against Appellant. Rather, Appellant's conduct giving rise to her termination were based upon her failure to properly supervise the students. Thus, regardless of what conduct the students engaged in, the issue before this Board is whether the record contains admissible evidence supporting the Local Board's finding that Appellant's failure to supervise the students constituted willful neglect of duties. Thus, if the record contains sufficient admissible and probative evidence supporting the Local Board's decision, the admission of the inadmissible statements was harmless error. M.H. v. Gwinnett County Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000). As set forth below, the record contains admissible evidence and, therefore, to the extent inadmissible hearsay was admitted, doing so was harmless error.

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. 8, 1976).

Appellant contends that her conduct does not rise to the level of willful neglect of duties.¹ A "willful neglect of duty" requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. . . . [W]illfulness' requires a showing of more than mere negligence." Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986). However, willful neglect of duties exists if Appellant knew, or should have known, what her obligations were pursuant to the Local Board's policy. See Clemmons v. Chattooga County Bd. of Educ., Case No. 1998-27 (Ga. SBE, Sep. 1998); see also Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008); Mahone v. Clayton County Bd. of Educ., Case No. 2010-77 (Ga. SBE, July 2010).

In this case, the record shows that Appellant knew or should have known that she should not leave students unsupervised. Moreover, Appellant made the conscious decision to leave the students unsupervised, which was an intentional decision and not mere negligence.² The record shows that Appellant left 17 students unsupervised for approximately 3 hours while she attended the Cirque Du Soliel show. Appellant's conscious decision is sufficient to constitute a willful act. Thus, the record contains admissible evidence supporting the decision of the Local Board.

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 November 2010.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS

¹ Appellant also asserts on appeal that the hearing tribunal finding is deficient. This assertion is without merit. The hearing tribunal clearly found that Appellant was guilty of willful neglect of duties based upon her failure to adequately supervise students.

² Appellant relies on Baker v. Stroud, Case No. 1985-48 (Ga. SBE, March 1986) in support of her position that she was only negligent. However, Baker is distinguishable because it dealt with the revocation of a teacher's certification. More importantly, in Baker, the teacher did not leave the students unattended for several hours to attend a show.