

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ALEXINE HUTCHINSON,	:	
	:	
Appellant,	:	CASE NO. 2011-32
	:	
vs.	:	
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Alexine Hutchinson (Appellant) from a decision by the Fulton County Board of Education (Local Board) to terminate her teaching contract because of insubordination, willful neglect of duty, and 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 Local Board's decision and that her termination was arbitrary and capricious. The Local Board's decision is **SUSTAINED**.

On September 8, 2010, Appellant was having difficulty controlling her classroom. In an effort to regain control, Appellant told her students that she was the "head nigger in charge" and the "HNIC". On the same day, Appellant left her classroom to make copies of some papers. While Appellant was absent from the classroom, a fight erupted between two female student that resulted in minor injuries to the students. The fight was broken up by other teachers.

The Local Superintendent moved to terminate Appellant's teaching contract based upon insubordination, willful neglect of duty, and other good and sufficient cause. A tribunal heard evidence on the charges, found that the evidence supported the charges, and recommended termination of Appellant's contract. The Local Board adopted the tribunal's recommendation and this appeal to the State Board of Education followed.

Appellant argues that there was no evidence to support any of the charges. Specifically, Appellant argues that her leaving the classroom to make copies did not constitute insubordination because she did not intentionally disobey a directive from a superior. Appellant also claims that leaving the classroom did not amount to willful neglect of duty because it was not a flagrant act, but, instead, was a mere error in judgment.

Appellant also argues that her comment, that she was the "head nigger in charge", was not willful neglect of duty because the comment was taken out of context and was uttered without any malice or ill intent. Appellant also argues that the comment is not a derogatory comment when used by an African-American, but is a positive comment because it denotes power and authority. Appellant claims that she was merely negligent when she made the comment.

In *Terry v. Houston Cnty. Bd. of Educ.*, 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986), the Court of Appeals said that willful neglect of duty required a showing of “a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct ...”, and “‘willfulness’ requires a showing of more than mere negligence.”

The tribunal acted as finders of fact. "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998). With respect to Appellant’s utterance of her comment about being in charge, the tribunal could find that it was made deliberately and emphasized by repeating the initials. Additionally, the tribunal could consider the use of language that is considered racially offensive in most quarters as constituting a flagrant act.

“Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by the school board or an administrative superior.” *Woods v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-13 (Ga. SBE, June 13, 1991).¹ Appellant claims that she did not willfully disobey a rule, regulation or order of a superior when she made her comment about being in charge. The Local Board claims that uttering the statement was insubordinate because the school was involved in a program to prevent bias and name-calling. Additionally, the Local Board claims that Appellant was insubordinate because she left her classroom to make a copy despite the fact that the school had a procedure in place where teachers could obtain copies without leaving the classroom. The Local Board, however, did not introduce any evidence that there was a direct order or rule against either action taken by Appellant. There was testimony that procedures were in place for teachers to obtain copies while they were teaching, but there was no testimony that teachers were told not to make copies. Similarly, there was no evidence presented concerning the content of the anti-bias program that would establish that Appellant failed to follow a rule or directive. The State Board of Education, therefore, concludes that there was no evidence to support a finding that Appellant was insubordinate.

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 a finding that Appellant willfully neglected her duties. Accordingly, the Local Board’s decision is **SUSTAINED**.

This _____ day of March 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS

¹ This definition was followed by the Court in *Brawner v. Marietta City Bd. of Educ.*, 285 Ga. App. 10, 16, 646 S.E.2d 89, 93 (2005).