

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LORENZO NASH,

Appellant,

vs.

**DEKALB COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 2012-06

DECISION

This is an appeal by Lorenzo Nash (Appellant) from a decision by the DeKalb County Board of Education (Local Board) to terminate his teaching contract after finding that he willfully neglected his duties because he signed an agreement with the Professional Standards Commission to suspend his teaching certificate for 45 days. Appellant claims that the Local Board’s decision was arbitrary and capricious because he did not violate any Local Board written policy and the school system regularly does not take any action against teachers who have their certificates suspended for up to 20 days. In addition, Appellant claims that there was no evidence of willful neglect of duties. The Local Board’s decision is reversed.

The Local Board employed Appellant as a sixth and seventh grade social studies teacher. On March 10, 2011, Appellant entered into a consent agreement with the Professional Standards Commission (PSC) that provided for the suspension of his teaching certificate from March 28, 2011, through August 11, 2011, a period of 45 contract days. On May 16, 2011, the Local Superintendent sent Appellant a notice that she would not be recommending renewal of his teaching contract. Appellant requested a notice of charges and a hearing on the charges. On May 26, 2011, the Local Superintendent charged Appellant with willful neglect of duties and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940.

A hearing was held on July 13, 2011, before a three-member tribunal of educators. During the hearing, evidence was presented that the school system allowed teachers whose certificate is suspended for up to 20 days to go on unpaid leave while the school system hires a substitute teacher to fill in during the suspension period. The school system, however, terminates the services of teachers whose certificates are suspended for more than 20 days although the Local Board does not have a written policy regarding this practice. Appellant was out of school on unpaid leave from March 28, 2011, until the end of the 2010-2011 school year. The suspension period would have expired three days after the start of the 2011-2012 school year, i.e., Appellant would have missed another three days of teaching before his suspension period

was over. The reason for Appellant's suspension was never disclosed in any of the proceedings.¹ The tribunal found Appellant guilty of willful neglect of duties and other good and sufficient cause because he entered into the consent agreement providing for a suspension of his teaching certificate.

The tribunal found that "Respondent has failed to maintain his teaching certification, as required by the PSC and School District. A condition of his employment requires that he maintain his certification." The tribunal recommended the termination of Appellant's teaching contract. When Appellant appealed to the Local Board, the Local Board decided there was not enough evidence to support the charge of other good and sufficient cause, but agreed that Appellant had willfully neglected his duties and voted to terminate his teaching contract. Appellant then appealed to the State Board of Education.

O.C.G.A. § 20-2-940(a) provides that a teacher can be terminated or suspended for eight reasons, including "willful neglect of duties", "failure to secure and maintain necessary educational training", and "any other good and sufficient cause". Appellant was charged with and found guilty of "willful neglect of duty". Appellant was also charged with "any other good and sufficient cause", but the Local Board dismissed the charge. Appellant claims that there was no evidence of willful neglect of duty. Appellant contends that the Local Superintendent erred in charging him with willful neglect of duty and not charging him with failure to secure and maintain necessary educational training.

The State Board of Education has previously considered cases involving the failure to secure and maintain necessary educational training. In *Gordon v. Jasper Cnty. Bd. Of Educ.*, Case No. 1985-47 (Ga. SBE, Feb. 13, 1986), the State Board of Education reversed the local board's decision to terminate a teacher who failed to obtain certification in special education because he held a certificate in another area and the special education certificate was not necessary. In *Carlyle, t al. v. The Board of Public Educ. For the City of Savannah and the County of Chatham*, Case No. 1981-11 (Ga. SBE, June 11, 1981), the State Board of Education upheld the local board's decision to terminate the contracts of four teachers who failed to pass their certification tests. In *Wilson v. Atlanta Public Schools Bd. Of Educ.*, Case No. 2010-26 (Ga. SBE, Jan. 14, 2010), the local board's decision to terminate the contract of a teacher for failure to obtain a certificate in the field to which she was assigned was upheld by the State Board of Education, which distinguished the *Gordon* case on the basis that *Gordon* did not involve a contract designating a specific assignment. While these cases show that a teacher can be dismissed for failure to secure and maintain necessary educational training, none of them involved an attempt to terminate a teacher's contract because of willful neglect of duties in failing to obtain a certificate.

The Georgia Court of Appeals has said, "[W]e interpret a 'willful neglect of dut[y]' under O.C.G.A. § 20-2-940 (a) (3) as being a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Under either of these interpretations, 'wilfulness' requires a showing of more than mere negligence." *Terry v. Houston*

¹ In its review, the State Board of Education is confined to the record and cannot consider anything that was not introduced before the tribunal or the local board. O.C.G.A. § 20-2-1160(e).

Board of Educ., 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986). “[T]o sustain the charge of willful neglect of duties, a local board of education has to establish that the teacher or employee knowingly undertook to avoid performing assigned or expected duties.” *McLeod v. Gordon Cnty. Bd. Of Educ.*, Case No. 1982-21 (Ga. SBE, Jan. 13, 1983).

The Local Board’s argument echoes the tribunal’s recommendation, i.e., Appellant willfully neglected his duties in entering a consent agreement with the PSC because it resulted in his inability to teach, which was a condition of his employment. The Local Board also argues that Appellant’s teaching contract required him to abide by its rules and by Georgia law, both of which required him to maintain a valid teaching certificate. The Local Board also argues that the actual charge against Appellant was immaterial because the facts showed that he could not teach during his suspension period.

The record, however, does not show that Appellant committed a flagrant act, or intentionally violated a known rule or policy, or engaged in a course of reprehensible conduct. The Local Board argues that Appellant’s signing of a consent agreement was a willing violation of its Policy GBU-E. The Local Board’s Policy GBU-E provides, in part:

An individual whose certificate has been ... suspended may not serve as a volunteer or be employed as an educator ... during the period of his or her ... suspension.... The superintendent ... shall be responsible for assuring that an individual whose certificate has been ... suspended is not employed or serving in any capacity in their district.

DeKalb Board Policy GBU-E: Code of Ethics for Educators (2009). The policy, however, does not apply to support a dismissal. There is nothing in the policy that informs a teacher that agreeing to a certificate suspension violates the policy; the policy merely states that a teacher cannot teach during the suspension period. The inapplicability of the policy is also shown by the fact that teachers who are suspended for 20 days or less are not terminated, notwithstanding the policy, which does has neither time limits nor dispensations.

In the final analysis, the charge against Appellant of willful neglect of duties is not supported by the evidence. “Willful neglect of duties” has consistently covered egregious types of actions and not inadvertent lapses or “by the letter” violations of a policy. *See, Rogers v. Clayton Cnty. Bd. Of Educ.*, Case No. 1981-6 (Ga. SBE, May 14, 1981)(working a second job while reporting ill), *Jones v. Montgomery Cnty. Bd. Of Educ.*, Case No. 1982-13 (Ga. SBE, Nov. 11, 1982)(failure to maintain library in usable condition), *Kelson v. The Board of Public Educ.*, Case No. 1982-15 (Ga. SBE, Nov. 11, 1982)(administering corporal punishment in violation of policy), *Holley v. Seminole Cnty. Bd. Of Educ.*, Case No. 1982-16 (Ga. SBE, Nov. 11, 1982)(leaving campus without permission, swearing at student, leaving class unattended), *Watson v. Hogansville City Bd. Of Educ.*, Case No. 1984-3 (Ga. SBE, Aug. 9, 1984)(improper conversion of school funds for personal use). The State Board of Education concludes that the Local Board failed to sustain its burden of proof to establish that Appellant willfully neglected his duties.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision. Accordingly, the Local Board's decision is REVERSED.

This _____ day of January 2012.

Mary Sue Murray
Vice Chair for Appeals