

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

ROSA JOHNSON,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2012-13
	:	
FULTON COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Rosa Johnson from a decision by the Fulton County Board of Education (“Local Board”) to terminate her employment contract. The Local Board terminated Appellant’s employment contract finding that she violated the Local Board’s policy by coming on school property under the influence of alcohol and acted in an inappropriate manner, thereby constituting willful neglect of duty and insubordination under O.C.G.A. § 20-2-940(a). On appeal, Appellant asserts that the Local Board’s decision is not supported by the evidence. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

Appellant was a newly hired teacher with the Local Board. On or about August 10, 2011, Appellant was notified that her 2011-2012 school-year employment contract was being proposed for termination. Appellant appealed her proposed termination from employment. On August 25, 2011, the Local Board provided Appellant a hearing at which Appellant was given the opportunity to present evidence before a tribunal. At the conclusion of the hearing, the tribunal found that Appellant had engaged in willful neglect of duty and insubordination, and therefore issued a recommendation to terminate her employment contract. The Local Board adopted the hearing tribunal’s recommendation. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was a newly hired fifth grade teacher at Heritage Elementary School for the 2011-2012 school-year. On August 5, 2011, Appellant attended a preplanning training session prior to the beginning of the academic school year. During the preplanning training session, several teachers observed the Appellant acting erratic and loud, and smelled what was believed to be alcohol on her. At the hearing, four (4) teachers testified regarding their observations of Appellant. The first teacher testified that he smelled a strong odor of alcohol on Appellant. The first teacher further described Appellant’s behavior was loud and animated. A second teacher testified that he also smelled alcohol on the Appellant. The second teacher described Appellant’s

behavior as loud, erratic, anxious and jittery. A third teacher testified that she also smelled a strong odor of alcohol on Appellant. The third teacher described Appellant's behavior as restless, antsy, loud and inappropriate. A fourth teacher testified that she smelled what appeared to be alcohol on Appellant. The fourth teacher also described Appellant's behavior as odd and inattentive.

The Principal testified that one of the teachers told her that Appellant smelled of alcohol. The Principal sat next to Appellant and confirmed the smell of alcohol. The Principal contacted human resources for instruction on handling the matter. Appellant was sent for a breath alcohol test which indicated that Appellant had a .018 level of alcohol in her system. The Local Board has a policy prohibiting employees from being on school property under the influence of alcohol. Appellant admits that she had been drinking the night before August 5, 2011. As a result, the Local Board proposed terminating Appellant.

III. ERRORS ASSERTED ON APPEAL

Appellant asserts that the evidence in the record does not support the Local Board's 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). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

Appellant contends that the decision of the Local Board is erroneous because she did not engage in willful neglect of duty or insubordination. "[I]nsubordination and wilful neglect of duties both involve an intentional violation or refusal to comply with a known rule." Chattooga County Bd. of Educ. V. Searels, 302 Ga. App. 731 (2010). 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). Moreover, 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 contains more than sufficient evidence to support the Local Board's decision. At the hearing, four (4) teachers testified regarding their observations that Appellant smelled of alcohol. The four teachers described Appellant's behavior as loud, animated, erratic, anxious, jittery, restless, antsy, inappropriate, and inattentive. After a teacher told the Principal, she sat next to Appellant and confirmed the smell of alcohol. As a result, the Local Board sent Appellant for a breath alcohol test which indicated that Appellant had a .018 level of alcohol in her system. Appellant intentionally engaged in drinking alcohol the night before she attended the preplanning training session. Appellant knew or should have known that she was still intoxicated. Appellant also knew or should have known the policies of the Local Board. See Clemmons, Case No. 1998-27; Maria Beal-Parker, Case No. 2008-17. Thus, the record supports the Local Board's decision that Appellant willfully violated its policy and engaged insubordination. Therefore, this Board finds that the Local Board's decision is supported by the evidence.

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 January 2012.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS