STATE BOARD OF EDUCATION

STATE OF GEORGIA

CONNIE RUTH DOMINY, Appellant, vs. THE ATLANTA PUBLIC SCHOOLS, DR. ALONZO A. CRIM, Superintendent, Appellee.	:	CASE NO. 1977-5

ORDER

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the decision herein of the Atlanta Board of Education to dismiss Appellant, Connie Ruth Dominy, be, and is hereby, affirmed.

The State Board of Education is concerned that the local system did not commence promptly a procedure for contract termination after the guilty plea by the teacher to a charge under the Georgia Controlled Substance Act. To us, a conviction under said Act is cause for

immediate temporary relief of duty under Ga. Code § 32-2101c(g) and prompt commencement of a procedure under Ga. Code § 32-2101c(a) for immoral conduct or other good and sufficient cause.

We so express our concern.

This 29th day of July, 1977.

Thomas K. Vann, Jr.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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CONNIE RUTH DOMINY, Appellant, vs. THE ATLANTA PUBLIC SCHOOLS, DR. ALONZO A. CRIM, Superintendent, Appellee.	:	CASE NO. 1977-5 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

The Atlanta Board of Education (hereinafter "Local Board") approved the dismissal of Connie Ruth Dominy (hereinafter "Appellant") on January 10, 1977, after receiving a recommendation to that effect from the Professional Practices Commission. Pursuant to request, a tribunal of the Professional Practices Commission had held a hearing on November 30, 1976 on charges that Appellant had violated the Georgia Controlled Substances Act by having in her possession cocaine, glutethimide, and marijuana. The Professional Practices Commission found

that Appellant had violated the Controlled Substances Act and recommended that Appellant's contract be terminated.

PART II

FINDINGS OF FACT

On March 4, 1976, Appellant pleaded guilty to violating the Georgia Controlled Substances Act and, under the provisions of the First Offender Act, was placed under two years probation without any judgment of guilt being entered. The plea was entered as a result of Appellant's arrest on September 4, 1975. At the time of her arrest, Appellant taught at Murphy High School.

Following her arrest, the principal at Murphy High School received telephone complaints about Appellant teaching in the school. The principal recommended that Appellant be transferred and in October, 1975, Appellant was transferred to Ralph McGill Elementary School where she completed the remainder of the school year without incident. Appellant was then offered and signed a contract for the 1976-77 school year. Throughout the time she was teaching, Appellant was considered by her principals to have average and above average ability.

In September, 1976, Appellant was transferred to Northside High School, but after three weeks, she was suspended from her duties. The principal testified that he received visits by students and teachers and telephone calls from parents inquiring about Appellant's arrest.

Appellant was notifed in writing of her suspension and given notice of a hearing before the Professional Practices Commission on October 5, 1976. The notice stated that Appellant was charged with violating the Georgia Controlled Substances Act, but it did not list any of the reasons for termination, suspension, or demotion set forth in Ga. Code Ann. §32-2101c(a). Appellant, however, did not object to the charges.

A tribunal of the Professional Practices Commission, presided over by a hearing examiner, conducted a hearing on November 30, 1976. The day before the hearing, the DeKalb Superior Court entered an order dismissing the probation sentence. The hearing examiner found that the charges against Appellant related to "immorality" and "other good and sufficient cause". Ga. Code Ann. §32-2101c(a)(4) and (8). The hearing examiner also found that the Local Board had carried the burden of proof in establishing that Appellant "had committed acts which constitute immorality and other good

and sufficient cause...." The hearing examiner concluded that "the hearing tribunal may determine that the...[Superintendent's] decision to terminate...[Appellant's] contract...should be affirmed." In an order issued December 17, 1976, the hearing tribunal concurred with the report and recommendation of the hearing examiner. The Local Board then entered an order of dismissal on January 10, 1977.

PART III

CONCLUSIONS OF LAW

1.

The primary issue before the State Board of Education is whether there is any evidence of immorality in the record which would permit the Local Board to dismiss Appellant. Appellant contends that the finding of immorality was not supported by the evidence. In determining this issue, the State Board of Education is guided by the principle that if there is any evidence to support the local board, then the State Board of Education will not disturb the decision of the local board. Antone v. Greene County Bd. of Educ., Case No. 1976-11.

The concept of morality or immorality covers a broad spectrum. Care must, therefore, be exercised by the reviewer to insure that individual concepts, i.e., subjective concepts, of morality are not used as the standards in determining whether there is evidence of immorality. In addition, the standards of review applied by the State Board of Education should be uniformly applied regardless of whether a case arose in a metropolitan urban area or in a rural area. The evidence of immorality must, therefore, meet certain objective standards that can be consistently applied.

The Georgia courts have apparently not been faced with the necessity of establishing any judicial standards for measuring the degree of evidence necessary to sustain a charge of immorality, and the written decisions of the State Board of Education have not established any standards. In other states, however, the courts have reviewed the standards that existed. In California, for example, the supreme court required a local board to establish that the questioned conduct had a direct adverse impact on the teacher's ability in the classroom. Morrison v. State Bd. of Educ., 82 Cal. Rptr. 175, 461 P.2d 375 (1969) (week long homosexual encounter insufficient to revoke certificate). In Morrison, the court stated that

the school board could consider such factors "as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, and the extent to which disciplinary action may inflict adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers." 461 P.2d at 386-87. Later, however, in Pettit v. State Bd. of Educ., 109 Cal. Rptr. 665, 513 P.2d 889 (1973), the California Supreme Court limited the Morrison decision and upheld the revocation of a teacher's certificate in a case where the trial judge wrote that

> "It should not be necessary for... unacceptable conduct to manifest itself in the classroom before the Board may, in the best interests of the educational system and of the students, revoke the teaching credentials of one who has evidenced such a disregard of the accepted standards of moral conduct and of the criminal statutes." 513 P.2d at 891.

The Colorado Supreme Court, in Weissman v. Bd. of Educ., 547 P.2d 1267 (Colo. 1976), cited the Morrison case and said that the state had a legitimate

interest in protecting the school community from harm. The court then said that the power to dismiss "can only be justified upon a showing that such harm has or is likely to occur." Id. at 1273. A teacher's conduct, therefore, must have some relation to teaching and must be found to have an adverse impact on the school, the students, or other teachers in order to be judged immoral.

The Morrison, Pettit, and Weissman cases are examples of where the courts have attempted to establish some objective criteria for judging a teacher's conduct. In Pettit and Weissman, there was a clear acknowledgement of the special relationship which teachers have with their students. This special relationship is reflected in the criteria established by the courts.

In the instant case, the record discloses that Appellant was arrested and charged with three counts relating to the illegal possession of drugs, that Appellant pleaded guilty to the charges and was sentenced to probation. The probation was later removed by the trial court, but knowledge of Appellant's arrest and the charges existed within the school community. In two schools where Appellant taught, the parents, teachers, and

students were aware of the arrest. The school principals, on cross examination, were of the opinion that Appellant was no longer effective in the school system because of the knowledge of the arrest and subsequent plea of guilty.

Regardless of one's personal feelings or judgment concerning the use or possession of drugs of any form, the Appellant's arrest, and subsequent plea of guilty, for the violation of a criminal statute of the state establishes an objective standard by which the Local Board could evaluate Appellant's conduct. Additionally, the Local Board could be justifiably concerned about the nature of the offense. The illegal use of drugs by school students is a major cause for concern throughout the country of parents, educators, and others. The Local Board could also objectively determine that knowledge of the offense in the community would adversely impact on Appellant's ability to function as a teacher within the system. Although Appellant was admittedly technically very competent, the knowlege in the community of her conduct was harmful to the school system and to her ability to effectively impart moral values to her students.

The Hearing Officer, therefore, concludes that the Local Board could and did apply objective criteria to dismiss Appellant on the ground of immorality.

2.

Appellant argues that the Local Board could not dismiss her after waiting for almost one year after the offense and after granting her a new contract with knowledge of the arrest and the plea of guilty. These circumstances, however, did not remove the fact that Appellant was arrested for and pleaded guilty to charges of illegally possessing drugs. The delay by the Local Board could have resulted from any number of reasons, including an attempt to assist Appellant. The delay produced mitigating circumstances which the Local Board could take into consideration. Appellant has not pointed out any provision of the Fair Dismissal Act that prevented the Local Board from seeking a dismissal even though a new teaching contract was awarded. Appellant was granted a hearing after receiving written notice and was represented by counsel. The Local Board satisfied the requirements of due process and the Fair Dismissal Act in seeking Appellant's dismissal.

3.

The hearing examiner in this case stated that

> "...the issue for...[the Professional Practices Commission] is not whether other alternatives are more appropriate for... [the Local Board] to follow but whether the burden of proof has been carried by ...[the Local Board] to support the recommendation that...[Appellant's] contract be terminated."

This language raises the issue of whether the hearing examiner improperly limited the inquiry to a question of determining the sufficiency of the evidence, and, if so, whether this limitation had a substantial adverse effect on the Local Board's determination.

Ga. Code Ann. §32-2101c(e) provides that a local board may appoint a five member hearing tribunal to hold a hearing and submit its recommendations to the local board, or the local board may refer the matter for hearing to the Professional Practices Commission. Neither the five member hearing tribunal nor the Professional Practices Commission is limited by statute to determining whether there is sufficient evidence to support the recommendation of the superintendent. Although there is no case law on the subject, it appears that the intent of the legislature was to permit a hearing tribunal to sit as the alter ego of the local board to develop the facts and to make a recommendation as to which of the courses of action permitted under Ga. Code Ann. §32-2104c should be followed by the local board in light of the facts developed at

the hearing. The hearing is a de novo proceeding to determine the disciplinary action to be taken and not a review proceeding to affirm or disaffirm the actions of the superintendent. The superintendent can only recommend and does not have the power to take action, except in limited circumstances not essential to this discussion. There is, therefore, nothing to be reviewed until such time as the local board takes action. If the hearing examiner did limit his inquiry to simply determining the sufficiency of the evidence, then the limitation would have been in error.

The local board, however, is free to accept or reject the recommendations of the hearing tribunal or the Professional Practices Commission. Poland v. Cook County Bd. of Educ., Case no. 1977-4. Thus, even if the hearing examiner did limit his inquiry to the sufficiency of the evidence, there is no indication in the record that the Local Board similarly limited its inquiry. On review by the State Board of Education, the primary question is whether there is any evidence to support the action of the local board. In this case, there was sufficient evidence before the Local Board to permit the termination of Appellant. Therefore, if any error was committed by the hearing examiner, it was not reversible error.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer concludes that the Atlanta Board of Education had the power and authority to dismiss Appellant and there was sufficient evidence to permit a dismissal. The Hearing Officer, therefore, recommends that the decision of the Atlanta Board of Education dismissing Appellant be affirmed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer