

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT SAXBY

Appellant,

v.

BIBB COUNTY BOARD OF EDUCATION

Appellee.

CASE NO. 1983-15

O R D E R

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

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Bibb County Board of Education herein appealed from is hereby reversed.

All members were present.

This 11th day of August, 1983.



LARRY A. FOSTER, SR.

Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT SAXBY,)	
)	
Appellant,)	
)	CASE NO. 1983-15
v.)	
)	
BIBB COUNTY BOARD)	
OF EDUCATION)	
)	REPORT OF
Appellee.)	HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Robert Saxby (hereinafter "Appellant") from a decision by the Bibb County Board of Education (hereinafter "Local Board") to dismiss him from his position as a teacher and coach on charges of immorality, wilful neglect of duty, and other good and sufficient causes. The appeal was made on the grounds the notice given to Appellant was insufficient, and the evidence did not support the decision. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

In a letter dated March 22, 1983, Appellant was notified that a recommendation would be made to the Local Board to take disciplinary action against him on charges of engaging in immoral conduct with a female student by taking her to his apartment

on January 25, 1983, and engaging in sexual relations with her, and in making arrangements to meet her again at a shopping center on February 14, 1983. Appellant was also notified that he had a right to a hearing, a right to counsel, and a right to subpoena witnesses. In addition, a list of witnesses and a summary of their expected testimony was contained in the letter. The hearing before the Local Board was scheduled for March 28, 1983. Appellant was relieved from duty during the period pending the hearing.

At the hearing, the female student testified that Appellant had taken her to his apartment on January 25, 1983, between the hours of 3:30 p.m. and 4:45 p.m., where they engaged in sexual intercourse. She further testified that Appellant returned her to school at 4:45 p.m. and she played in a basketball game at 5:00 p.m. The student was able to give a detailed description of Appellant's apartment and its furnishings.

Other witnesses, including the chairman of the Local Board, placed Appellant at a funeral at 3:30 p.m. on January 25, 1983. Prior to going to the funeral, Appellant testified that he had given the female student a ride from the Appling "B" building to the Appling "A" building of the school complex. Another coach saw the two of them in the car, and shortly thereafter, Appellant returned to the Appling "B" building and talked with the coach. Appellant then went to the funeral. He remained at the funeral until all of the family and friends were seated inside the church and then left and returned to the Appling "B" building until 5:30 p.m. where his basketball team was

practicing for a game they were to play the next evening. The coach who talked with Appellant at the Appling "B" building walked to the Appling "A" building right after their discussion and saw the female student in the stands preparing for her basketball game.

The female student testified that on February 14, 1983, she met Appellant in the Appling "B" building at 8:00 a.m. and he told her to meet him on the morning of February 17, 1983, at a shopping center. Other witnesses testified that Appellant was in his first period class in a different building at 8:00 a.m. on February 14, 1983. He first took roll, and then left the classroom for approximately ten or fifteen minutes. Appellant maintained that he left the classroom to take a telephone call from a photographer who was cancelling an appointment to take pictures of his class. The student who testified that Appellant had left the room also testified that the photographer was supposed to take the pictures during the afternoon of February 14, but the photo session was postponed until February 17, 1983.

On February 16, 1983, Appellant received permission from his principal to take a sick leave day on February 17, 1983, in order to see a doctor for treatment of a flu-like condition which had him congested and caused coughing. Appellant testified that a friend, who was unable to drive because of a back condition, had asked him for a ride to Savannah, and that after leaving the school on February 16, he agreed to drive to Savannah. The two of them returned to Macon at approximately 5:00 a.m. on

the morning of February 17, 1983. This testimony was substantiated by the friend. Appellant testified that he left the friend's house, drove to his girl friend's apartment, and remained there until approximately 9:00 a.m. when he left to get gas for his car and to go to the doctor.

The female student testified that on the morning of February 17, 1983, she arrived at the shopping center at 8:00 a.m., waited for Appellant, but he did not appear. She then went to a school patrolwoman, who was about to finish her duty, and asked for a ride to Appellant's apartment complex, which was some distance away. At 8:50 a.m., the patrolwoman finished her duties and drove the female student to the apartment complex. On the way, the female student's uncle observed her in the patrolwoman's car and he followed them to the apartment complex. After the student left the car, the patrolwoman was leaving the apartment complex and the student's uncle hailed the patrolwoman, identified himself, and asked what the student was doing in her car and where she had gone. The patrolwoman explained that the girl had said she was sick and was going to see an aunt in the apartments. The uncle told the patrolwoman they did not have any relatives living in the apartments, and he was going to call the police. The patrolwoman left the scene, returned to the school, reported the incident, and asked for the security personnel to investigate. The uncle, in the meantime, drove to his home to pick up the student's two aunts, his sisters, and drove back to the apartments.

According to the female student's testimony, she went to Appellant's door, knocked, and discovered he was not at home. She then went behind the apartments and waited. She heard Appellant drive up, so she returned to the front of the building and knocked again. This time, Appellant admitted her into the apartment. She testified that he told her to forget what happened on January 25, 1983. He then left the apartment and drove away. The student testified that she then saw one of her aunts in front of the apartment, so she let herself out the back door, went to another apartment, knocked on the door, and asked to use his telephone for an emergency. The occupant allowed her to use the telephone. After making the call, the student went out the back door and walked around to the front of the buildings where she encountered her uncle, two aunts, and the school policeman. The student initially said she was at the apartments to deliver some drugs to an individual she identified as "P.C." After three weeks, she changed her story and accused Appellant.

The school policeman testified that he received a call at approximately 9:00 a.m. on February 17, 1983, to go to Appellant's apartment complex to look for a student. As the policeman drove towards the apartments, he met Appellant at a stop sign. According to the policeman, Appellant was driving from town towards the apartments. The policeman motioned Appellant to pull over and he asked Appellant where the apartments were located. Appellant gave him directions and then drove on. The policeman waited for some cars to pass him, and then he drove

directly to the apartments, but he had lost sight of Appellant. When he arrived, the policeman did not see the girl, Appellant, or Appellant's car. He circled the apartment complex two or three times and then saw the student's uncle and aunts. They began talking and while they were talking, the female student came out from behind the apartment building.

The student's uncle and aunts testified that, as they were driving on the highway on their way to the apartment complex, they saw Appellant driving towards town.

Appellant testified that after he gave the policeman directions to the apartment complex, he proceeded on the same road and went past the road to his apartments, to a place where he could turn around. He then came back to the intersection where he had met the school policeman and filled his car with gas. He then proceeded to a hospital complex to see a doctor. He left the hospital complex and went back to his girl friend's house where he stayed until approximately 1:00 p.m. He then went back to his apartment and went to bed. A doctor called on him at approximately 5:00 p.m. and gave him a prescription.

When the hearing was concluded, the Local Board voted that, although there was insufficient evidence to support the charge of sexual misconduct, there was evidence of violations which supported the charges of wilful neglect of duties, immorality, and other good and sufficient cause. The Local Board then voted to terminate Appellant's teaching contract. The Local Board did not make any findings of fact to support its decision. A timely appeal was made to the State Board of Education.

PART III

CONCLUSIONS OF LAW

The appeal was made on the grounds the Local Board did not give Appellant proper notice, and that the evidence did not support the charges. The Local Board argues that the charges were sufficient and that there was evidence presented to support the decision of the Local Board.

The State Board of Education follows the rule that if there is any evidence to support the decision of a local board, the decision will not be disturbed upon review. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Ed., Case No. 1976-11. The Local Board argues that there was evidence that Appellant took the female student to his apartment on January 25, 1983, and that he arranged to meet with her on February 17, 1983, at his apartment.

The Hearing Officer has carefully reviewed the transcript and is unable to conclude that the evidence supports the Local Board's arguments. With regard to the events of January 25, 1983, school was dismissed at 3:15 p.m. The female student testified that Appellant picked her up at 3:30 p.m. and they went directly to his apartment where they stayed until approximately 4:30 p.m. and then returned to the school at 4:45 p.m. The chairman of the Local Board, however, placed Appellant at a funeral at 3:30 p.m. Other witnesses placed the time between 3:30 p.m. and 3:50 p.m. Appellant was observed giving the female student a ride from the Appling "B" building to the Appling "A" building, but the female student was observed in the Appling

"A" building shortly thereafter preparing for a basketball game. There is some discrepancy in the times as to when Appellant gave the female student a ride between the two buildings. From Appellant's testimony, it appears that he gave the student a ride before going to the funeral. If this was the case, then the student was observed preparing for the basketball game before 4:00 p.m. The coach who observed Appellant and the female student in the car testified that the time was approximately 4:00 p.m. when he saw them. This placed the female student in the Applying "A" building between 4:00 p.m. and 4:15 p.m., with Appellant at a funeral between 3:30 p.m. and 3:45 p.m. Appellant's apartment was a ten or fifteen minute drive from the school complex. Driving to and from his apartment, therefore, would have consumed between twenty and thirty minutes. Assuming, for the sake of argument, that Appellant left the funeral at 3:30 p.m., drove back to the school, picked up the female student, drove to his apartment, and then drove immediately back to the school, he would not have been able to return to the school until 4:00 p.m. Appellant, however, did not leave the funeral until the family and friends had been seated in the church. He also had to drive from the church to the school. It stretches the limits of imagination to believe that Appellant would have picked up the female student, driven to his apartment complex, stayed ten or fifteen minutes, and then driven back to the school. The limits of physical possibility have to be considered at some point. The Local Board did find that there was insufficient evidence to establish that Appellant had sexual relations with the female

student. It also appears that there was insufficient evidence to establish that Appellant had any other contact with the student on January 25, 1983, other than to give her a ride from the Appling "B" building to the Appling "A" building.

With respect to the February 17, 1983, incident, the Local Board argues that there was sufficient evidence to establish that Appellant had arranged to meet the female student at his apartment, but that upon being observed, he avoided his apartment and did not go through with the meeting. There is, however, no evidence that Appellant arranged to meet the student at his apartment. The only testimony concerning the meeting on February 17, 1983, came from the female student, and she testified that the meeting was supposed to take place at a shopping center. She went to the apartment complex entirely on her own without any prior arrangements. The Local Board could speculate that there had been a prior arrangement to meet at the apartment, and that when Appellant saw the school policeman, he knew that the female student was at his apartment, but there was no evidence of such a prior arrangement or that Appellant had any knowledge that the student was at his apartment. In a dismissal proceeding, the Local Board has the burden of proof in establishing a case, O.C.G.A. § 20-2-940(e)(4), and resort to speculation is insufficient to carry the burden of proof.

The Local Board then argues that there was evidence of wilful neglect of duty in that Appellant feigned illness to miss school on February 17, 1983, but instead drove to Savannah on February 16, 1983, and did not return to Macon until 5:00

a.m. on February 17, 1983. Appellant did, however, see a doctor on February 17, 1983, and obtained a prescription for his condition. This was the reason he gave for obtaining the sick leave and the reason that was accepted by both his principal and assistant principal, both of whom observed his condition. Appellant was not charged with wilful neglect of duty because he obtained sick leave with the intention of driving to Savannah on the day before the sick leave started and there was no evidence presented that the Appellant was expected to adhere to some other standard of conduct while on sick leave, e.g., stay home in bed during the entire day after seeing the doctor.

The Hearing Officer concludes that the Local Board failed to establish that Appellant was guilty of immorality or wilful neglect of duty.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record presented, and the briefs and argument of counsel, the Hearing Officer is of the opinion that the Local Board did not prove the charges made against Appellant. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.



L. O. BUCKLAND
Hearing Officer