

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>BRENDA WALKER,</b>	:	
	:	
<b>Appellant,</b>	:	
<b>v.</b>	:	
	:	<b>CASE NO. 1992-26</b>
<b>MARIETTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is an appeal by Brenda Walker (“Appellant”) from a decision by the Marietta City Board of Education (“Local Board”) not to renew her teaching contract. Appellant claims that the evidence did not support the charges. We sustain the Local Board’s decision.

**PART II**

**FACTUAL BACKGROUND**

Appellant holds a doctorate degree and taught music for the Local Board for four years at Marietta High School. As the music instructor, Appellant also served as the director of student choruses. She has been a music teacher and choral director for 22 years.

On April 13, 1992, the Local Superintendent sent a letter to Appellant to inform her that he would not recommend renewal of her teaching contract for the 1992-1993 school year because of willful neglect of duties, insubordination, and other good and sufficient causes. Appellant requested a hearing and a list of specification and witnesses. On May 1, 1992, the Local Board’s attorney mailed a list of charges to Appellant’s attorney.

The principle charge against Appellant was that she violated the No Pass/No Participation regulation of the State Board of Education, Regulation IDE, § 160-5-1-.18, on three different occasions. The second charge was that Appellant repeatedly exhibited unprofessional behavior and conduct by failing to communicate effectively with parents, showed favoritism, provided inadequate supervision of students at school and on field trips, and displayed inattention to detail and overall lack of judgment. Each charge was followed by a number of specific instances.

On June 2, 1992, the Local Board conducted a hearing on the charges. On June 4, 1992, the Local Board found that Appellant “committed acts constituting willful neglect of duty and other good and sufficient cause.” By a 4-2 vote, the Local Board voted not to renew Appellant’s contract.

During the hearing, testimony was given that a male member of one chorus was ineligible to participate in extracurricular activities because his grades were too low. The student protested his status, but both Appellant and the school principal told the student that he was ineligible. On September 12, 1991, the chorus participated in a performance at Ridgeview Institute. Appellant, a single parent with a small daughter, arrived later than she planned because her daughter became ill at the last moment and she had to obtain a baby sitter. Appellant claimed that she was in a rush and did not notice that the ineligible student had taken his place with the other fifteen members of the chorus as they lined up to perform.

Appellant testified that she did not notice the ineligible student when the chorus performed because he was in the back row. The principal, who knew the student was ineligible, observed that the student was performing but did not take any action. After the performance, Appellant was told by a parent that the student had performed. The next day, Appellant submitted a report to the principal that the ineligible student had performed, but that she did not intentionally cause a violation of the No Pass/No Participation regulation. The principal wrote up a “Notification and Documentation Record” and admonished Appellant not to let such an incident happen again. The Local Superintendent wrote to Appellant and told her to error on the side of caution in the future.

On November 10, 1991, the chorus was involved in making audio and videotapes for use at the Atlanta Underground Christmas tree lighting. The taping session took place in a church located on the campus of Oglethorpe University. The chorus gathered at the high school to drive to Oglethorpe in three separate cars. The same ineligible student who was involved in the September 12, 1992, incident asked Appellant if he could ride with the group. Appellant told him that she did not see anything wrong with his riding to the session since they were not performing. A parent questioned whether the student should travel with the group, but Appellant responded that she had everything under control. During the taping session, the ineligible student participated in the singing. During the hearing, Appellant claimed that she did not see the ineligible student singing because she was not involved in directing. Instead, she was playing the piano and listening to the tapes while an individual from Oglethorpe University directed the chorus and arranged how the chorus was seated. Appellant claimed that the student did not initially participate because she saw him sitting in one of the pews apart from the chorus, but the student joined the chorus when it was rearranged. However, several students, including the ineligible student, testified that the ineligible student participated during the entire taping session.

A parent reported the incident to the principal. The principal wrote a note to Appellant and asked her whether the student had participated. Appellant responded in writing that “as we were not performing, I thought it was acceptable.” She then wrote a second note that said, “Yes [the student] did sing on our recording.” The documentation differed significantly from the testimony Appellant gave during the hearing. The principal then issued another “Notification and Documentation Record.” The Local Superintendent requested the Professional Practices

Commission to investigate the incident and recommend whether Appellant's teaching certificate should be revoked.

During the subsequent investigation by the Professional Practices Commission, Appellant told the investigator that the ineligible student did not sing during the taping session. At the hearing, Appellant claimed that when the investigator questioned her, she was unaware that the student sang during the session and it was not until after some of her students told her that she became aware of the ineligible student's participation.

### **PART III**

#### **DISCUSSION**

On appeal, Appellant claims that there was no credible evidence that she willfully neglected her duties. Additionally, she claims that the State Board of Education's modification of Regulation IDE, § 160-5-1-.18, nullifies the basis for any action by the Local Board. This latter claim is based upon the proposition that a person cannot be punished for the violation of a rule if the rule is repealed during the pendency of the punishment proceedings. The Local Board argues that under the "any evidence" rule there is evidence to support the charges, and that Appellant was charged with violating the Fair Dismissal Act rather than with violation of the No Pass/No Participation regulation, i.e., Appellant was charged with willful neglect of duty and not with violation of the No Pass/No Participation regulation.<sup>1</sup>

We first address the violations of the No Pass/No Participation regulation. In July, 1992, the State Board of Education repealed Regulation 160-5-1-. 18 and issued a revised version that does not cover chorus activities. "A reviewing court should apply the law as it exists at the time of its judgment rather than the law prevailing at the rendition of the judgment under review, and may therefore reverse a judgment that was correct at the time it was rendered and affirm a judgment that was erroneous at the time, where the law has been changed in the meantime ...." Fulton County v. Spratlin, 210 Ga. 447, 80 S.E.2d 780 (1954), citing City of Valdosta v. Singleton, 197 Ga. 194, 208, 28 S.E.2d 759, 767.

In the instant case, there is no question that there was evidence that would have permitted the Local Board to find that Appellant had willfully neglected her duties by permitting a violation of the No Pass/No Participation rule. The record shows that Appellant was the teacher in direct charge of two events where an ineligible student participated. While Appellant

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<sup>1</sup> The Fair Dismissal Act, O.C.G.A. § 20-2-940 et seq., provides for eight grounds for termination or suspension: (1) incompetency; (2) insubordination; (3) willful neglect of duties; (4) immorality; (5) inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education; (6) to reduce staff due to loss of students or cancellation of programs; (7) failure to secure and maintain necessary educational training, and (8) any other good and sufficient cause. In addition, the Act provides certain procedural safeguards for a teacher, principal, or other employee having a contract for a definite term.

attempted to characterize the incidents as mere lapses or the result of the student's disobedience, the Local Board, as the trier of fact, was not obligated to accept Appellant's version of the events that occurred. The second incident followed the Local Superintendent's admonition not to take any chances, yet Appellant permitted the student to travel with the group to Oglethorpe University even after a parent questioned the wisdom of the student being with the group.

We conclude that under the regulation as it existed at the time of the hearing, the Local Board could find that Appellant willfully neglected her duties by permitting two violations of the No Pass/No Participation regulation. If, however, the rule set forth in Fulton County v. Spratlin, supra, is applicable, then the Local Board's decision must be reversed.

The Local Board argues that the rule is inapplicable. According to the Local Board, the charge of willful neglect of duty arises under the Fair Dismissal Act and not under the No Pass/No Participation regulation. Thus, Appellant's action constituted a violation of a valid rule at the time of the occurrence, which is a cause for termination under the Fair Dismissal Act. The fact that the rule was later changed is immaterial because the termination arises under the Fair Dismissal Act rather than under the regulation. We agree with the reasoning of the Local Board.

The rule cited by Appellant would have application if her termination arose solely under the provisions of the regulation as it existed at the time of the violation. In such a case, the subsequent repeal of the regulation during the pendency of the proceedings would have prevented termination. Here, however, the basis for the termination is willful neglect of duty under the Fair Dismissal Act because of the violation of a regulation that existed at the time of the violation. Subsequent revisions of the particular rule are immaterial because Appellant is not being terminated under the provisions of the regulation.

The Local Board failed to establish that any of the remaining charges established any basis for the non-renewal of Appellant's contract. The Local Board attempts to characterize the additional charges as a pattern that shows Appellant's willful neglect of duty and unprofessional conduct. In our view, however, the additional charges do not show a pattern, but instead are only indicative of the weakness of the charges against Appellant. For example, one of the charges is that some parents complained to the principal about the high cost of going to the State Chorus meet. Appellant had told the parents that the cost, \$150, covered registration and rooms. The parents did not express any discontent to or ask Appellant for an itemization of the expenses, but instead complained directly to the principal. When the principal asked her, Appellant immediately showed him that the actual costs incurred were \$162 per student. The excess over \$150 was covered by the chorus fund. Another charge was that Appellant left school early without informing any administrator. The Local Board, however, failed to present any evidence that Appellant left school early.

Another charge was that parents complained to the principal about the administration of the funds raised by the chorus students. The record, however, showed that the principal was in charge of administering the funds and maintained all of the records. The parents did not have any authority over the funds and Appellant did not have any control over the funds. The fact that two parents complained, out of a potential 160 parents, is not indicative of any willful neglect of duty or professional irresponsibility. There was one incident, where Appellant called the employer of

a student, that in hindsight may have involved the exercise of poor judgment, but it did not show any neglect of duty.

#### **PART IV**

#### **DECISION**

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence that Appellant willfully neglected her duties by permitting the violation of the No Pass/No Participation Regulation, Regulation § 160-5-1-.18, on two separate occasions. The decision of the Local Board, therefore, is hereby

SUSTAINED.

This 12<sup>th</sup> day of November, 1992.

Mr. Lathem and Mr. Williams were not present.

James H. Blanchard  
Vice Chairman for Appeals