

STATE BOARD OF EDUCATION

STATE OF GEORGIA

PATRICIA CLARK,	:	
	:	
Appellant,	:	
v.	:	CASE NO. 1993-34
	:	
GLYNN COUNTY	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Patricia Clark (Appellant) from a decision by the Glynn County Board of Education (Local Board) to terminate her teaching contract because of immorality and other good and sufficient causes under O.C.G.A. § 20-2-940 after she was arrested twice for driving under the influence and two marijuana cigarettes were found in her house. Appellant claims on appeal that the Local Board denied her due process rights and there was no evidence to sustain the charges. The Local Board's decision is sustained.

PART II

FACTUAL BACKGROUND

On May 20, 1993, Appellant was arrested and charged with driving while intoxicated after a disturbance at her parents' home, where she lived. At the time of her arrest, Appellant was unable to exit her vehicle without assistance. She later was found to have a .2 gram blood/alcohol level. The police found two marijuana cigarettes in Appellant's bedroom. When asked about the cigarettes, Appellant said she was holding them for a Brunswick High School student.

Three days later, on May 23, 1993, Appellant was again arrested for driving under the influence. Appellant was unable to stand without support and was found to have a .15 gram blood/alcohol level.

Appellant met with an assistant superintendent and her principal. She told them that she had been arrested for driving under the influence and that the police had found two marijuana cigarettes in her possession that she was holding for someone else. The assistant superintendent recommended termination of Appellant's teaching contract.

On July 1, 1993, the Local Superintendent wrote to Appellant that he was recommending termination of her teaching contract because of immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940(a) based on the two arrests, her possession of marijuana, and her involvement in a physical altercation with her mother and father. The Local Superintendent also informed Appellant that a hearing would be held before the Local Board on July 12, 1993, if she wanted to exercise her right to have a hearing. Appellant received the local Superintendent's letter on July 2, 1993.

When the hearing before the Local Board began on July 12, 1993, Appellant moved for a continuance because her attorney was unable to be present and three of her witnesses were absent because of family emergencies. The Local Board's attorney argued against a continuance because Appellant's attorney did not call and ask for a continuance and because Appellant did not subpoena any witnesses. The Local Board chairman ruled that the hearing would go forward.

During the hearing, three police officers and the assistant superintendent testified and related the above facts. Appellant did not deny any of the charges and only offered evidence that she was performing her duties as a teacher. At the conclusion of the hearing, the Local Board voted to terminate Appellant's teaching contract. Appellant then filed an appeal with the State Board of Education.

PART III

DISCUSSION

Appellant claims that she was denied due process because the Local Board's attorney served as legal advisor to the Local Board and also served as prosecutor. The record, however, shows that the Local Board's attorney did not serve in an advisory role during the hearing. The attorney objected to continuing the hearing, but the chairman of the Local Board made a ruling without consulting with the attorney. During the hearing, the Local Board's attorney made only one objection, which was to the introduction of a doctor's written report.

The cases cited by Appellant invite a close scrutiny of the record when an attorney acts in a dual capacity as prosecutor and advisor. *North Fulton Hosp. Inc. v. State Health Planning and Dev. Agency*, 168 Ga. App. 801 (1983); *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68 (1917). In the instant case, however, the Local Board's attorney did not function in a dual capacity. Instead, he merely presented the case to the Local Board and made objections as his role dictated. The State Board of Education concludes that the Local Board did not deny Appellant any due process rights because the Local Board's attorney presented the case for the Local Superintendent.

Appellant next claims that none of the evidence supports a finding of immorality. Appellant claims that neither the possession of less than one ounce of marijuana nor driving under the influence of alcohol are crimes involving moral turpitude. Additionally, fighting, simple assault and simple battery do not involve moral turpitude. If the charges do not involve moral turpitude, Appellant claims that there is

no basis for a finding of immorality. Appellant also claims that her after—school conduct cannot be used as a basis for dismissing her because the Local Board failed to show that the conduct affected her teaching ability or that there was any public awareness of her conduct that would diminish her effectiveness as a teacher.

The Local Board responds that the charges do not have to involve moral turpitude to support a finding of immorality. In support of this assertion, the Local Board cites *Dorminy v. Mays*, 156 Ga. App. 187, S.E.2d (1979), where the Court stated:

Fact finders are the proper forum to decide issues of obscenity and immorality. The school board in this instance should have the power to control its own body of interpretations as to immorality, and appellate courts sitting aloof in their ivory tower cannot substitute their judgment of morality for that of the fact finder if there is any competent evidence supporting the findings.

Id at 190. Additionally, the Local Board argues that the facts support a decision to terminate Appellant's teaching contract for other good and sufficient cause.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, *Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). In this case, although there was no evidence that Appellant's conduct had become known in the community so that it would have affected her ability to teach, there was evidence that Appellant admitted she was holding marijuana cigarettes for a high school student. The Local Board could decide that such conduct, at a minimum, constituted other good and sufficient cause to terminate Appellant's teaching contract.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board did not deny Appellant any due process rights and there was evidence to support the Local Board's decision. The Local Board's decision, therefore, is

SUSTAINED.

This 13th day of January, 1994.

Mrs. King, Mr. McGlamery and Dr. Thomas were not present. Mr. Lathem's seat is vacant due to his resignation effective December 31, 1993.

Robert M. Brinson
Vice Chairman for Appeals