STATE BOARD OF EDUCATION

STATE OF GEORGIA

BRUCE J. KUEBER,	
Appellant,	
vs.	**CASE NO. 1997-33**
COLUMBIA COUNTY BOARD OF EDUCATION,	**DECISION**
Appellee.	

This is an appeal by Bruce J. Kueber (Appellant) from a decision by the Columbia County Board of Education not to renew his teaching contract for the 1997-1998 school year based upon charges of insubordination, willful neglect of duty, and inciting, encouraging or counseling of students to violate any valid state law, municipal ordinance, or school board policy or rule under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the evidence failed to support the charges and the Local Superintendent did not carry the burden of proof. The Local Board's decision is sustained.

Appellant was employed by the Local Board in 1991 as a vocational transportation teacher. During the 1995-1996 school year, Appellant was informed that, because of declining enrollment, he had an option of teaching half time at Harlem High School or full-time by splitting his day between Harlem High School and Evans High School. Appellant chose to work full-time between the two schools, which meant that he had to travel 25 miles from Harlem High School to Evans High School in one hour. In addition to splitting his day between two schools, his classes were combined so that he had different levels of students in the same class, i.e., ninth, tenth, eleventh, and twelfth graders were placed in the same class.

At the beginning of the 1996-1997 school year, Appellant was assigned a homeroom class at Harlem High School, where he taught in the morning. When he complained and explained that he could not get ready for classes in two schools if he had a homeroom class, Appellant was relieved of his homeroom duties.

On December 5,1996, Appellant was told by an assistant principal that he was supposed to attend an advisory session with senior students at Harlem High School. Appellant was under the impression that he did not have an advisory group because he had been relieved of homeroom duties and the training sessions for the advisory meetings had occurred in the afternoons while he was at Evans High School. Appellant told the assistant principal that he was unaware of the advisory session and was unprepared to conduct such

a session. The assistant principal told him to conduct the session regardless of his preparation. Appellant told the assistant principal that he would conduct the session, but he would have to be fired before he would conduct another session.

Appellant was late in arriving at the advisory session. While he talked with the students, he complained and apologized for being late and unprepared. He explained to the students that he had not been informed about the advisory session. During the course of his discussion, Appellant used the words, "damn," "hell," and "shit" several times. Some students were offended by the language and reported the incident to the assistant principal. The assistant principal issued a written reprimand against Appellant.

During the 1996-1997 school year, Appellant was observed three times at Harlem High School and received two "Needs Improvement" in the use of his time. The assistant principals who conducted the evaluations said that students were off task during part of the twenty-minute periods that they observed Appellant. The remaining parts of his Harlem High School evaluations were marked satisfactory.

On March 25, 1997, the assistant principal at Evans High School observed Appellant for twenty minutes and gave him nine "Needs Improvement."[1] The assistant principal noted that he did not observe any instruction, there were no activities that promoted student engagement, less than half the class was on task, students were left with nothing to do, and there was no attempt to monitor the progress of the students who were working. The assistant principal then asked Appellant to sign the evaluation. Appellant refused and said he wanted to review the evaluation and have a meeting before he signed it. The assistant principal then went to the principal and reported that Appellant had refused to sign his evaluation. The principal wrote a letter to Appellant and explained that he had to sign the evaluation or he would be deemed insubordinate. Appellant then signed the evaluation, but wrote a letter of explanation concerning the class. Appellant explained that the class period was devoted to end-of-the-semester catch-up activities. Because the students were at different levels of progress, he was assisting various groups with different projects.

Following the March 25, 1997, evaluation, the principals and assistant principals from both Harlem High School and Evans High School met to consider the evaluations. They agreed to recommend against renewal of Appellant's teaching contract. The Local Superintendent subsequently wrote to Appellant and informed him that a recommendation would be made to the Local Board not to renew Appellant's teaching contract for the 1997-1998 school year. Appellant then requested a hearing under the provisions of O.C.G.A. § 20-2-940.

Appellant was charged with insubordination, willful neglect of duty, inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance or

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[1] There are only eleven categories on the Georgia Teacher Observation Instrument.

policy or rule of the school board, and other good and sufficient cause. The Local Board conducted a hearing that lasted three days. At the conclusion of the third day, the Local Board voted to uphold the Local Superintendent's recommendation not to renew Appellant's teaching contract. Appellant then filed an appeal to the State Board of Education.

Appellant claims that the evidence presented does not support the Local Board's decision. In addition, Appellant claims that the non-renewal of his contract violates his rights of free speech under the First Amendment to the United States Constitution.

Under O.C.G.A. § 20-2-940, the Local Board has the burden of proof in a non-renewal hearing. O.C.G.A. § 20-2-940(e)(4). "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).

The Local Board claims that Appellant was insubordinate because he refused to sign the evaluation that was made on March 25, 1997. The Local Board claims that this follows a pattern in that Appellant also refused to sign a professional development plan that was given to him in 1995. The record, however, does not support the Local Board's claim that Appellant was insubordinate. Instead, the record shows that Appellant refused to sign the evaluation form while he was in front of his class and had not had an opportunity to read it. There was testimony that a teacher has five days to sign an evaluation form. As soon as he was informed by his principal that he needed to sign the evaluation form, Appellant signed the form. There was, therefore, no insubordination on Appellant's part.

The Local Board also claims there was evidence to support the charge that Appellant incited, encouraged, or counseled students to violate state law because he gave the keys to a car to a Harlem High School student and the student, who did not have a driver's license, later went on a joy ride in the car. The evidence showed that the student's mother left the car at the automotive shop to be worked on during the day and was returning that afternoon to pick up the car. Appellant gave the keys to the student and told the student to give the keys to his mother when she returned in the afternoon because Appellant would be at Evans High School. There was no evidence that Appellant incited, encouraged, or counseled the student to violate any state law, municipal ordinance, or rule of the Local Board.

In addition, the Local Board claims that Appellant encouraged the violation of Local Board policies because he failed to report a student who cut an assigned class. The evidence, however, showed that Appellant had marked the student absent and was

unaware that the student had cut a subsequent class. Again, this incident does not show that Appellant encouraged the violation of any Local Board policy.

The Local Board claims that Appellant willfully neglected his duties because (1) he failed to properly conduct his advisory session on December 5, 1996, (2) he allowed the unlicensed student to drive the car, and (3) he failed to keep his students on task on March 25, 1997. The evidence that Appellant gave the keys to an unlicensed student does not establish willful neglect of duty. Also, failing to keep his students on task does not constitute a willful neglect of duty. "[Willful neglect of duty is] a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct ... [and] 'willfulness' requires a showing of more than mere negligence." *Terry v. Houston County Bd. of Ed.*, 178 Ga. App. 296, 342 S.E.2d 774 (1986). The Local Board failed to show that Appellant's actions in giving the keys to the unlicensed student constituted a flagrant act or omission, or an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Additionally, the failure to keep his students on task was not a flagrant act or omission, or an intentional disregard of a known rule or policy, or a continuous course of reprehensible conduct.

There was, however, evidence that Appellant used profanity several times while conducting the advisory session. Local Board policy does not permit teachers to use profanity in front of students. Although there was evidence that other teachers used profanity in front of the students, including one of the assistant principals, Appellant's use of profanity constituted a clear violation of Local Board policy.[2] There was, therefore, evidence that Appellant willfully neglected his duties in the conduct of the advisory session.

Appellant claims that he has a First Amendment right to speak, and teach, as he deems necessary. Appellant has not cited any authority for his argument that a teacher has a right to use profanity in the classroom. The claim is without merit.

Based upon the foregoing, it is the opinion of the State Board of Education that there was some evidence before the Local Board that would permit it to find that Appellant willfully neglected his duties and there was other good and sufficient cause not to renew Appellant's teaching contract. The Local Board's decision, therefore, is SUSTAINED.

This 12th day of February, 1998.
Dr. Bill Grow was not present.

Larry Thompson
Vice Chairman for Appeals

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[2] There was evidence that the assistant principal told a female student to lose her "smart ass" attitude.