

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID HINSON

Appellant,

vs.

**CLINCH COUNTY
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1999-5

DECISION

This is an appeal by David Hinson (Appellant) from a decision by the Clinch County Board of Education (Local Board) to terminate his contract as Media/Technology Coordinator because of incompetence and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the evidence failed to show incompetence and that he was charged to retaliate against his wife, who had filed a discrimination lawsuit against the Local Board. The Local Board's decision is sustained.

On January 6, 1996, during a basketball game, a thief entered the visiting girls' locker room and stole approximately \$2,000 in jewelry and money. The thief gained entrance through the ceiling tiles.

At the time, Appellant was the Media/Technology Coordinator. In this position, he reported directly to the Local Superintendent, but was charged with the responsibility of performing tasks assigned to him by the principals. Shortly after the theft occurred, Appellant met with the principal of the high school, who was also his wife, the assistant principal, and the resource officer from the sheriff's department. The group discussed how they might catch the thief and a suggestion was made that a video camera could be placed in the locker room. Appellant, the assistant principal, and the resource officer went to the locker room to see if a video camera could be mounted in the room. After determining that it was possible, Appellant and the resource officer mounted a camera behind a wire mesh so that it viewed the entranceway and an area in front of the entranceway. On January 12, 1996 and January 26, 1996, the video camera was turned on before the visiting teams arrived and was turned off after the games were played. No thefts occurred, but the cameras recorded the young women changing clothes. Although the camera was behind the wire mesh, some of the young women were aware of it and others were not. Altogether, there were four tapes made on the two dates.

Since there were no thefts reported, Appellant did not review the tapes, but took them back for reuse in other video activities. In the spring of 1997, the Local Superintendent's nephew stole one of the tapes from the media center and found that some of the images of the young

women were still on the tape. As a result, the Local Superintendent suspended Appellant and the resource officer. A grand jury indicted Appellant, but a subsequent grand jury dismissed the indictment. After the grand jury's findings and the investigative reports of the Georgia Bureau of Investigation were released, the Local Superintendent recommended termination of Appellant's contract on the grounds of incompetency, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940.

Meanwhile, Appellant's wife was demoted from her position of principal and given a teaching position in the seventh grade.¹ Late in December 1997, she filed an employment discrimination lawsuit against the Local Board. It was immediately thereafter that the Local Superintendent began his investigation of Appellant, which led to the charges against Appellant.

A tribunal conducted a hearing on the charges on November 16, 1998. The tribunal found that Appellant was incompetent and that other good and sufficient cause existed to terminate his contract. The tribunal concluded that:

1. Appellant was incompetent because a competent administrator would not engage in taping students dressing and undressing in a locker room, even if it was part of a scheme to catch a thief;
2. Appellant was incompetent because he kept the tapes for two years in an area that was accessible to other people, and
3. Appellant was indifferent to the feelings of the female students when he participated in videotaping them.

On December 3, 1998, the Local Board upheld the tribunal's recommendation to terminate Appellant's contract. Appellant then filed a timely appeal to the State Board of Education.

Appellant claims that the evidence does not support the charges and that he was merely following the principal's directions. Appellant also claims that he was dismissed by the Local Superintendent in retaliation for his wife filing a discrimination claim against the Local Board and he was denied due process because the hearing officer prevented him from presenting evidence that school officials offered to assist him to obtain dismissal of the criminal charges if his wife would drop her discrimination claim.

"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

¹ The principal's demotion was unrelated to the taping incident since it occurred before the Local Superintendent became aware that any taping had occurred.

(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 the instant case, the tribunal found that Appellant failed to erase the tapes and he placed them into a system that permitted the tapes to fall into the hands of a student. The record shows that Appellant was the custodian of the tapes and should have been aware that they contained scenes of the young women dressing and undressing for the basketball game. Appellant also failed to check with the Local Superintendent or the Local Board’s attorney to determine if he should place the video camera in the girl’s dressing room. The State Board of Education, therefore, concludes that there was evidence to support the Local Board’s decision.

Since there was evidence to support the Local Board’s decision regarding how Appellant maintained the tapes, the State Board of Education is bound to uphold that decision. Nevertheless, the State Board of Education observes that it is abundantly clear from the record that the decision to place the video cameras in the dressing room was made by several people, all of whom may have exercised poor judgment. Except for the testimony of the resource officer that he said the taping should not occur while the young women were in the dressing room, it does not appear that anyone was concerned about their privacy while they were changing clothes. Nevertheless, the State Board of Education is bound by the tribunal’s finding that the final responsibility rested with Appellant since he was the custodian of the tapes after the taping was completed.

The State Board of Education also notes that this decision is not intended to limit the ability of teachers and other school personnel to take appropriate steps to make the schools safe and crime free. In the unique circumstances of this case, the Local Board took action because of the privacy interests of the young women changing their clothes –a decision the State Board of Education is bound to uphold because of the “any evidence” rule.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision. Accordingly, the Local Board’s decision is SUSTAINED.

This 4th day of May 1999.

Larry Thompson
Vice Chairman for Appeals