STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT ROBBINS,

Appellant,	:	
	:	
vs.	:	**CASE NO. 2001-39**
	:	
ATLANTA CITY BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	
	:	

This is an appeal by Robert Robbins (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to demote him from the position of principal to a non-administrative position after a hearing tribunal found him guilty of willful neglect of duties and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because he allowed a teacher to leave class every day to attend school, thus causing the Local Board to pay the teacher when the teacher had not worked. Appellant claims that the Local Board cannot demote him since it renewed his contract after becoming aware of the facts of the case, and there was no evidence that he violated any of the Local Board's policies. The Local Board's decision is sustained.

The Local Board employed Appellant as a principal for the 1999-2000 school year at Campbell Elementary School. At the beginning of the year, Appellant learned that the administration was sending him some additional special education students and that the administration would provide him with an additional special education teacher and paraprofessional. The additional students arrived but the administration failed to provide an additional teacher or paraprofessional. Consequently, Appellant's school did not comply with the Individuals With Disabilities Act, 20 U.S.C. § 1400 *et seq*. (IDEA). Appellant attempted to cope with the situation by having his assigned teachers rotate through the class, but this took the teachers away from their regularly assigned students. Appellant repeatedly asked for additional personnel, but to no avail until November 1999. In the meanwhile, Appellant had a paraprofessional who said he needed one credit to become a certified special education teacher. Appellant authorized the paraprofessional to leave the campus each day to attend a class at Clark Atlanta University. During the period from August 1999 through October 15, 1999, the paraprofessional left the school for two or three hours on Monday through Thursday without signing out or signing back in. Appellant failed to make any corrections in the payroll records or otherwise inform the administration that the employee was absent from the job four days per week. Additionally, Appellant did not check to see if the paraprofessional was actually enrolled in a class at Clark Atlanta University.

On October 11, 1999, Appellant told the special education director that he was allowing the paraprofessional to attend classes. The special director reported the matter to Appellant's immediate supervisor, who told Appellant to stop the practice. In addition, the supervisor initiated an investigation into the matter, but nothing took place for the remainder of the 1999-2000 school year.

On April 14, 2000, Appellant received a contract for an assistant principal position for the 2000-2001 school year. When Appellant asked why he was being reassigned, he was told it was because of the pending investigation about his release of the teacher to attend classes. Appellant signed the contract as an assistant principal. Then, on June 29, 2000, the Local Superintendent sent Appellant a letter that said the Local Superintendent would recommend disciplinary action because of willful neglect of duty and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 as a result of Appellant's action in allowing the paraprofessional to leave class. The June 29 notice also said that a hearing would be held at some future date.

A hearing was held on November 15, 2000 before a 3-member tribunal. After the hearing, the tribunal found that Appellant allowed the paraprofessional to take unauthorized leave, failed to record the paraprofessional's absences or insure that the paraprofessional recorded them, failed to verify whether the paraprofessional attended school, and failed to have the paraprofessional's pay reduced for the time he did not work at school.[1] [2] The tribunal found that Appellant violated several of the Local Board's policies and recommended his demotion from an administrative position to a non-administrative position. On February 1, 2001, the Local Board adopted the tribunal's report and recommendation and demoted Appellant. Appellant then appealed to the State Board of Education.

Appellant makes several claims in his appeal. First, he claims that the hearing officer should have dismissed the proceedings because he was given improper notice. Next, he claims that the Local Board lacked the authority to demote him during the 2000-2001 school year based upon actions taken during the 1999-2000 school year since it offered, and he accepted, a contract for the 2000-2001 school year with knowledge of his conduct before the offer was made. In addition, Appellant claims that the Local Board failed to carry its burden of proof to show that he violated any of the Local Board's policies.

Appellant's first argument is that the Local Board failed to give him notice as required under the provisions of O.C.G.A. § 20-2-942(b)(2), which provides:

> In order to demote or fail to renew the contract of a teacher who accepts a school year contract for a fourth or subsequent consecutive school year from the

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[1] Investigators were unable to find any classes that would have satisfied the paraprofessional's needs, and there was no record that the paraprofessional registered to attend any classes.

[2] The Local Board has policies that permit educational leave for absences that are properly requested, but approval is required from above the principal level.

> same board of education, the teacher must be given written notice of intention to demote or not renew the contract of a teacher ....

O.C.G.A. § 20-2-942(b)(2). The statute goes on to provide that the notice has to contain copies of O.C.G.A. § 20-2-211, O.C.G.A. § 20-2-940, O.C.G.A. § 20-2-942-947. Appellant claims that the June 7, 2000 notice did not contain copies of the statutes and, therefore, was defective, which should have resulted in the dismissal of the proceedings.

There are two reasons why the proceedings should not have been dismissed because of the lack of copies of the statutes. The first reason is that the notice provisions of O.C.G.A. § 20-2-942 referenced by Appellant do not apply because he was a principal rather than a teacher. The second reason is that the Local Board substantially complied with the notice requirements and Appellant was not harmed by the manner in which the notice was provided.

O.C.G.A. § 20-2-942 specifically defines "teacher" and "school administrator". O.C.G.A. § 20-2-942(a). A "teacher" is defined as "any professional school employee certificated by the Professional Standards Commission, but not including school administrators." O.C.G.A. § 20-2-942(a)(4). The notice requirements of O.C.G.A. § 20-2-942(b) apply only for demotions or the non-renewal of a teacher's contract. Since Appellant was a school administrator rather than a teacher, the requirements of O.C.G.A. § 20-2-942(b) did not apply to the notice given to him.

Appellant claims that the notice requirements apply to him even though he is an administrator because O.C.G.A. § 20-2-942(c) makes the notice requirements applicable to any administrator who became an administrator before April 7, 1995. Appellant, however, is reading too much into the provisions of O.C.G.A. § 20-2-942(c), which provides:

> A person who first becomes a school administrator on or after April 7, 1995, shall not acquire any rights under this Code section to continued employment with respect to any position of school administrator. A school administrator who had acquired any rights to continued employment under this Code section prior to April 7, 1995, shall retain such rights: (A) In that administrative position which such administrator held immediately prior to such date; and (B) In any other administrative position to which such administrator has been involuntarily transferred or assigned, and only in such positions shall such administrator be deemed to be a teacher for the purpose of retaining those rights to continued employment in such administrative positions.

O.C.G.A. § 20-2-942(c). This section does not establish any notice requirements for administrators based upon a date of service. It only provides that an individual who became an administrator before April 7, 1995 cannot be demoted or have their contract non-renewed without cause. Thus, since Appellant was an administrator, there was no requirement to include a copy of the statutes in the notice of June 29, 2000. The hearing officer, therefore, properly denied the motion to dismiss the proceedings before the hearing.

The notice provided to Appellant on June 29, 2000 complied with all notice requirements. As pointed out and argued by the Local Board, O.C.G.A. § 20-2-942 provides the

notice provisions needed before a teacher asks for a hearing. After a teacher asks for a hearing, then the notice provisions of O.C.G.A. § 20-2-940 apply. These provisions require notice to the teacher or principal of the reasons for the action, the names of the known witnesses, the time and place of the hearing, and that the teacher or principal will be provided with subpoenas to compel the attendance of witnesses or the production of documents. O.C.G.A. § 20-2-940(b). In the instant case, the Local Board provided Appellant with a notice that met the requirements of O.C.G.A. § 20-2-940(b).

To discharge or suspend a teacher, principal, or other employee holding a contract for a particular term, a school system only has to provide a notice that complies with O.C.G.A. § 20-2-940(b), i.e., notice of the reasons for the action, the names of the known witnesses, the time and place of the hearing, and that the teacher, principal, or employee will be provided with subpoenas to compel the attendance of witnesses or the production of documents. These same notice requirements apply to a teacher whose contract will not be renewed or who is being demoted only if the teacher asks for a hearing on the non-renewal or demotion. O.C.G.A. § 20-2-942(b)(2). In the instant case, the Local Superintendent treated the notice as if Appellant was appealing from the notice of intent to demote and wanted a hearing by providing Appellant a charge letter, as required by O.C.G.A. § 20-2-940. Since Appellant received all of the rights enumerated in the statutes, Appellant was not harmed by not receiving the statutes as attachments to the charge letter.

Appellant's next argument is that the Local Board lacks the authority to demote him because it offered him and he accepted a contract for the 2000-2001 school year with full knowledge of his actions. This argument relies upon two bases. First, O.C.G.A. § 20-2-211(b) provides that if an employee is not given a notice of non-renewal by April 15 then the employee's contract is automatically renewed for the next school year. Second, in *Peterson v. Brooks Cnty. Bd. of Educ.*, Case No. 1990-29 (Ga. SBE, Dec. 13, 1990), *r'vsd., Brooks Cnty. Bd. of Educ. v. Peterson,* Civil Action No. 91-CV-43 (Brooks Cnty. Sup. Ct., Aug. 2, 1991), the State Board of Education held that evidence of conduct that occurred before a contract was renewed could not be used not to renew a subsequent contract.

As argued by the Local Board, O.C.G.A. § 20-2-211(b) only applies to the renewal or non-renewal of a contract; it does not apply to a demotion. Similarly, *Peterson* also involved the non-renewal of a contract and not a demotion. There is, therefore, no basis for Appellant's argument that by renewing his contract the Local System does not have the authority to demote him for actions that occurred before the renewal.

Appellant also claims there was no evidence that he violated any of the Local Board's policies. "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 tribunal found, among several things, that Appellant allowed a teacher to leave campus without obtaining required authorizations and without signing out, and permitted false payroll information to be

submitted. The State Board of Education concludes that there was evidence to support the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board acted properly in demoting Appellant and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of June 2001.

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Bruce Jackson
Vice Chairman for Appeals