STATE BOARD OF EDUCATION

STATE OF GEORGIA

AARON TOOKES,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2001-40**
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

Aaron Tookes (Appellant) served as the principal of Herndon Elementary Schools as an employee of the Atlanta City Board of Education. On April 24, 2000, he began hugging one of his teachers in her classroom. He claims the incident was voluntary; she claims she did not approve. Tookes claims that he hugs all of his teachers, male and female. Nevertheless, the Atlanta Board of Education dismissed him on charges of immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. From this decision, Tookes has appealed to the State Board of Education, claiming that the Local Board exceeded its authority and that the evidence did not support the charges. We sustain the Local Board's decision.

On June 29, 2000, the Local Superintendent, Dr. Beverly Hall, recommended disciplinary action against Mr. Tookes. Dr. Hall recommended demotion and a 60-day suspension. A hearing on Dr. Hall's recommendation was finally held on January 20, 2001 before a three-member tribunal. After the hearing, the tribunal found that Tookes conduct constituted immorality and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(4) and (8) and violated Standard 10 of the Georgia Code of Ethics for Educators. The tribunal concluded that there is no excuse for a principal to embrace a teacher behind closed doors. The tribunal concurred with the Local Superintendent and recommended a demotion to a non-administrative position and a suspension for 60 days.

On February 10, 2001, the Atlanta Board of Education rejected the tribunal's recommendation and terminated Mr. Tooke's employment contract, thus ending a 24-year career with the Atlanta Public Schools. Mr. Tookes says that during the entire proceedings he was advised that the ultimate penalty he would receive was a 60-day suspension and a demotion.

Mr. Tookes claims that:

1. The Board's decision was not supported by the findings of fact and conclusions of law submitted by the tribunal;

2. The Board's decision ignored the recommendations of the Local Superintendent;

3. The Board's decision ignored the recommendation of the tribunal, and

4. The Board's decision did not permit him to present a fair defense and appropriately respond to the charges against him.

Based upon these claims, Mr. Tookes argues that the Local Board's decision violates his constitutional right to due process, does not provide him with notice, violates the principles of estoppel, and is counter to the dictates of Federal and State jurisprudence.

The primary complaint by Mr. Tookes is that the Local Board failed to give him any notice that he faced possible termination. Instead, the Local Superintendent recommended demotion and a 60-day suspension. The Local Superintendent's recommendation dictated the strategy used by Mr. Tookes in presenting his defense. For example, if he had known that termination was a possibility then he could have accepted an agreed upon resolution rather than go through a hearing. Accordingly, Mr. Tookes claims that the Local Board denied him his due process rights.

Tookes also claims that the Local Board should be estopped to terminate him since he was informed that demotion and suspension were the maximum penalty he faced and acted accordingly. Because he relied on the representations made by the Local Superintendent to his detriment, he claims the Local Board is estopped to impose a greater punishment.

The essential question raised by Appellant is whether a local board of education can impose a greater punishment than recommended by the local superintendent or by a tribunal. If a local board is bound by the recommendation of either the local superintendent or a tribunal, then the recommendation is not a recommendation. Instead, the local board would be reduced to either approving the sentence or reversing it. The State Board of Education, however, has held that a local board of education is not required to follow the recommendation of a tribunal. *See, e.g., Woods v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-13 (Ga. SBE, June 13, 1991); *Poland v. Cook Cnty. Bd. of Educ.*, Case No. 1977-4 (Ga. SBE, June 9, 1977). In a recent case, the same issue was raised and the State Board of Education stated, "Under O.C.G.A. § 20-2-940, the tribunal does not make a final decision. Instead, it merely makes a recommendation to the local board, and the local board can take any action permitted by law." *Adams v. Cobb Cnty. Bd. of Educ.,* Case No. 1999-60 (Ga. SBE, Jan. 13, 2000).

Appellant's claim that he was not put on notice that his contract could be terminated is without merit. O.C.G.A. § 20-2-940 provides that a teacher or principal's contract can be terminated because of immorality. O.C.G.A. § 20-2-940(a)(4). The Local Superintendent's charge letter of June 29, 2000 did not contain a recommendation of suspension but cited that Appellant was being charged with immorality. The Local

Board's sexual harassment policy also provides for possible termination and Appellant admitted that he completed a training course on the policy two weeks before the incident. Appellant, therefore, had both training and statutory notice that his contract could be terminated and the Local Superintendent's correspondence did not provide otherwise. Appellant had notice that his contract could be terminated despite any perception that a lesser punishment would be imposed. The State Board of Education, therefore, concludes that the Local Board was not required to follow the recommendation of either the Local Superintendent or the tribunal and any recommendations of lesser punishment would not preclude the Local Board from terminating Appellant's contract.

Appellant also argues that the evidence did not support the charges. "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 heard the witnesses and determined that Appellant sexually harassed the teacher by accosting her in her room behind a closed door and after checking to see if anyone was watching. The State Board of Education concludes that there was evidence in the record 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 did not deny due process to Appellant, that Appellant had notice of the charges against him, the Local Board did not have to follow the recommendation of the tribunal, and there was evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of July 2001.

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Bruce Jackson
Vice Chairman for Appeals