

STATE BOARD OF EDUCATION

STATE OF GEORGIA

LARRY NEACE,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-60
	:	
GWINNETT COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Larry Neace (Appellant) from a decision by the Gwinnett County Board of Education (Local Board) to terminate his teaching contract after finding him guilty of insubordination, willful neglect of duty, and for other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940(a). This is a case of first impression regarding the interpretation of language in O.C.G.A. § 20-2-940(a) concerning the termination of a teacher’s contract for refusing to alter a grade. Appellant claims that his refusal to follow his principal’s directive to follow the Local Board’s policy that prevents the use of grades as a disciplinary measure did not constitute insubordination because he feared for his teaching certificate. The Local Board’s decision is sustained.

In 1998, the Local Board adopted Policy IHA, which provides that grading “is not to be used for discipline purposes.” The policy is explained to teachers each year during pre-planning week and teachers are told that grades cannot be affected because of conduct. Appellant, however, adopted a practice of giving his students a zero grade if they slept in his class because they were wasting class time.¹ Appellant’s principal claimed that Appellant was violating the Local Board’s Policy IHA.

During the spring of 2005, Appellant gave an assignment to one of his classes to complete and turn in the following day. Appellant gave the student some class time to work on the assignment, but one of his students went to sleep. The student turned in his paper the next day and received a perfect grade on the assignment. Appellant, however, changed the student’s grade by reducing it by fifty percent because the student slept during the time he was supposed to be working on the assignment in class.

¹ Appellant was a high school science teacher and taught for the Local Board for 23 years. He testified that his policy had been in place for approximately ten years. Appellant’s syllabus, however, did not mention sleeping as being a component of a student’s grade.

The student's parent questioned the grade reduction and asked for a conference. Early in the morning on April 1, 2005, the last day of school before spring break, Appellant met with the student's parent, the principal, and an assistant principal. Appellant explained that he reduced the student's grade because the student was sleeping in class on the first day of the assignment. When the student's parent asked why the student was allowed to sleep in class, Appellant replied that it was his job to teach, not to keep students awake in his class, that he did not care if students slept in his class. When the student's parent then asked why the student's grade was changed, Appellant responded that the grade was changed because his syllabus informed the students that they would receive zeros if they wasted time in class.

The conversation between Appellant and the parent began to escalate and the principal intervened. The principal told Appellant that it was against the Local Board's policy to reduce grades to discipline a student and that teachers were not supposed to allow students to sleep in class. Appellant said that he was not going to change his way of teaching and that if the students wanted to sleep in his class, then he was going to let them sleep but would reduce their grades; he was responsible for teaching and the students were responsible for learning. The principal told Appellant that he wanted Appellant to correct the student's grade to what the student had earned so that Appellant would be in compliance with the Local Board's Policy IHA. Appellant said that he was not going to change the grade, that if the principal wanted the grade changed, then the principal would have to make the change. The principal then told Appellant to meet with him in the afternoon.

Appellant met with the principal and an assistant principal later in the day. The principal gave Appellant a written directive to correct the student's grade by the end of the day and to stop letting students sleep in his class. Appellant told the principal that he was not going to change the grade.

On April 11, 2005, when school resumed after the spring break, Appellant sent the principal a copy of an email he had sent to the Professional Practices Commission (PSC) in which he asked whether he should change the student's grade.² Appellant wrote to the principal that he would respond to the principal's April 1, 2005, directive after he received an answer from the Professional Standards Commission (PSC). Because Appellant was still refusing to correct the student's grade, the principal turned the matter over to the human resources department.

On April 14, 2005, Appellant met with the chief of the human resource office, who explained to Appellant that his actions amounted to insubordination and that the PSC was not involved in the situation. Appellant insisted that he was not going to change

² Appellant failed to inform the PSC that the Local Board had a policy against using grades as a disciplinary measure.

the student's grade until he heard from the PSC³. The human resource officer told Appellant to think things over for a few days and they would meet later.

On April 18, 2005, the chief of the human resource office met with Appellant again. Appellant still refused to change the student's grade and the human resource officer recommended the termination of Appellant's contract to the Local Superintendent.

On April 19, 2005, Appellant met with the Local Superintendent, who told Appellant that it was against the Local Board's policy to reduce a student's grade as a disciplinary measure. Appellant again stated that he was not going to change the student's grade until he heard from the PSC, without revealing that he had already received a response from the PSC. The Local Superintendent then submitted a recommendation to the Local Board to terminate Appellant's teaching contract because of insubordination, willful neglect of duty, and for other good and sufficient cause under the provisions of O.C.G.A. 20-2-940(a).

The Local Board conducted a hearing on the charges. During the hearing, Appellant testified that he would not change the student's grade unless he received assurances from the PSC that his certification would not be in jeopardy if he changed the grade. At the end of the hearing, the Local Board voted to terminate Appellant's teaching contract. Appellant then filed an appeal to the State Board of Education.

Appellant claims that there was no evidence that he willfully disregarded his principal's directive or that he willfully neglected his duties, or that there was other good and sufficient cause to terminate his contract. Appellant also claims that the principal's directive was not reasonable because Policy IHA is ambiguous. Appellant further claims that the principal's directive to change the student's grade was made without good and sufficient cause. Finally, Appellant argues that the Local Board's decision is null and void because the Local Board failed to issue written findings of fact and conclusions of law.

"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).

³ Appellant received a response from the PSC on April 14, 2005, but he did not reveal this fact until the hearing before the Local Board. In the response, the PSC director said that the grade change made by Appellant was "probably justified" if all the students received a grade for the day and if there was a course objective on which the grade was based.

Insubordination requires a showing of “some intent to disregard the orders of a superior...,” *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, Jan, 1987), or “a showing of a deliberate refusal to execute a lawful command of a superior.” *Goode v. Atlanta City Bd. of Educ.*, Case No. 2005-07 (Ga. SBE, Jan. 13, 2005). Appellant contends that he did not have any intent to disregard the principal’s directive, but, instead, he was concerned that if he followed the principal’s order, he would be subject to losing his teaching certificate for violating the Code of Ethics of the PSC. Standard 4 of the PSC prohibits “falsifying, misrepresenting, omitting or erroneously reporting information regarding the evaluation of students” Appellant’s argument, which was raised before the Local Board, addresses his explanation of why he disregarded the principal’s directive, but it does not establish that he lacked any intent to disregard the principal’s orders. Instead, the principal and the administration explained to Appellant that his actions violated the Local Board’s policy that prohibits reducing grades as a disciplinary measure, but Appellant continued to insist that he was not going to follow the Local Board’s policy and give the Student the grade that the Student had earned. Additionally, Appellant continued to take the position that he was going to allow students to sleep in his classes despite the principal’s directive to not allow students to sleep in class. Appellant, therefore, had the intent to disregard the orders of his principal and the Local Superintendent.

Appellant also argues that he misunderstood the nature of the principal’s directive because he had been changing the grades of students for ten years without any objection by the administration and he did not feel that the Local Board’s Policy IHA applied to his changing of grades when students slept in his class. Appellant’s understanding of the application of the Local Board’s policy, however, is immaterial once it was explained to him that his policy of changing grades violated the Local Board’s policy. The Local Superintendent did not seek to terminate Appellant’s contract because he initially changed a student’s grade based upon a misunderstanding, but because Appellant refused to comply with the Local Board’s policy after it was explained to him that the administration deemed that the changing of grades because of sleeping in class constituted a prohibited disciplinary measure. Appellant’s reliance on any misunderstanding does not relieve him of the responsibility to follow the principal’s directive when the reason for the directive was explained to him.

Appellant also contends that the directive from his principal was not a lawful directive because, he claims, the PSC’s Standard 4 prevents him from changing the student’s grade. Appellant, however, overlooks the fact that he was the one who changed a student’s grade – the student scored a 100 on the paper, but Appellant reduced the student’s grade to 50 in violation of the Local Board’s prohibition against changing grades as a disciplinary measure. Thus, the principal’s directive was not a request to change a student’s grade, but, instead, was a directive to correct the student’s grade to what the student earned on the paper. The PSC’s Standard 4 was not applicable since the principal’s directive did not involve falsifying or erroneously reporting a student’s grade. The principal’s directive, therefore, was a lawful directive.

Appellant next argues that the Local Board's decision violates O.C.G.A. § 20-2-940(a), which provides, in part, that "a teacher ... shall not have ... [his or her] contract terminated or suspended for refusal to alter a grade or grade report if the request to alter a grade or grade report was made without good and sufficient cause." Appellant claims that the principal's directive to change the student's grade was made without good and sufficient cause because the disciplinary code, the faculty handbook, and the Local Board's policies do not address sleeping in class as a disciplinary matter, and Policy IHA does not define discipline. Appellant then argues that his reducing of the student's grade was reasonable and asking him to correct the grade was unreasonable because the principal did not counsel with him and did not contact the PSC to determine the effect of correcting the student's grade. Again, Appellant's argument overlooks the fact that the Local Superintendent did not seek to terminate his contract because he misinterpreted Policy IHA and made the initial grade change. Instead, the Local Superintendent's recommendation resulted because Appellant refused to follow the directive to correct the grade and follow Local Board policy. The principal's directive was a reasonable interpretation of Policy IHA that reducing a student's grade because the student slept in class was a disciplinary action rather than an academic action. Appellant's own syllabus does not indicate that sleeping in class would result in a grade reduction. Instead, the syllabus provides that a student's grade is comprised of tests, quizzes, and projects, labs, homework, and a final exam. Later, it states, "If you waste class time when you are supposed to be working on an assignment or a lab, you will receive a '0' for that assignment or lab, regardless if you turn it in later." Thus, since classroom participation is not an element in determining a student's grade, reducing the grade because of wasting time is a prohibited disciplinary measure and not an academic measure as claimed by Appellant. The principal's directive, therefore, was made with good and sufficient cause.

Appellant claims that there was no evidence to support the Local Board's finding that he willfully neglected his duties. There was, however, testimony that teachers are instructed at the beginning of each year not to let students sleep in their classes. Appellant took the position at the hearing before the Local Board that it was not his duty to wake students up; he was there to teach and it was the students job to learn; if the students wanted to sleep in his class, that was their choice. There was, therefore, evidence that Appellant willfully neglected his duties by allowing students to sleep in his classes despite having received instructions not to allow students to sleep in class.

Appellant also argues that the Local Board's decision is null and void because it failed to issue written decision within fifteen days after the hearing. Georgia Board of Education Rule 160-1-3-.04(3) provides that "at the conclusion of the hearing, or within 15 days thereafter, the [local board] shall notify the parties of its decision in writing and shall notify the parties of their right to appeal the decision to the State Board of Education." The Local Board concluded its hearing on May 6, 2005, thus making May 23, 2005, the day notice should have been made because the fifteenth day fell on a Saturday. Appellant was orally told the Local Board's decision at the end of the hearing and written notice was sent on May 25, 2005. The record shows that Appellant was notified of his right to appeal to the State Board of Education when he received his notice

of charges. The Local Board was two days late in providing written notice of its decision but this delay did not cause any harm to Appellant since his appeal was timely filed and he was aware of the Local Board's decision at the end of the hearing. "A substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law." O.C.G.A. § 1-3-1(c). Since the Local Board substantially complied with the notice requirement and Appellant was not harmed by the two day delay, the State Board of Education concludes there is no basis for declaring the Local Board's decision null and void.

Appellant also argues that the Local Board's decision to terminate him was arbitrary and capricious because there were other options available, such as reprimand or suspension, and termination did not take into consideration his many years of service. While there is no question that there were other options available, the record shows that the Local Board took Appellant's record into consideration. There was substantial evidence that Appellant was not going to follow the Local Board's policy regarding grading and the administration's policy of not letting students sleep in class. The State Board of Education, therefore, concludes that the Local Board's decision was not arbitrary or capricious.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board provided Appellant with due process, there was evidence to support the Local Board's decision, and the Local Board's decision was not arbitrary or capricious. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of October 2005.

Wanda T. Barrs
Chair, State Board of Education