STATE BOARD OF EDUCATION

STATE OF GEORGIA

SEAN BLASS,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2006-57**
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Sean Blass (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to terminate his 2005-2006 teaching contract because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the charges. The Local Board's decision is reversed.

Appellant was employed by the Local Board for more than four years. On March 17, 2005, the Local Superintendent wrote to Appellant and said that a recommendation would be made to the Local Board to terminate his teaching contract. Appellant asked for a hearing and a notice of charges pursuant to the provisions of O.C.G.A. § 20-2-940, but the school system did not take any action until May 17, 2005, when the Local Superintendent sent Appellant a charge letter that outlined that the Local Superintendent was recommending termination of Appellant's contract because of insubordination and other good and sufficient cause under the provisions of O.C.G.A. §20-2-940 due to his "inappropriate social relationships with students" based on an incident that occurred in November 2004. Appellant again asked for a hearing, but no action was taken by the school system.

Appellant began the 2005-2006 school year on July 12, 2005 when he attended a pre-planning session.[1] On July 13, 2005, Appellant was notified that the Local Superintendent was suspending him pending a hearing.

On August 18, 2005, a hearing started before an appointed tribunal. The parties stipulated that the purpose of the hearing was the termination of Appellant's 2005-2006 contract. The school system presented evidence concerning Appellant's actions that occurred in November 2004. The evidence showed that Appellant had purchased some chicken wings for a former student, who was in another school, and three of her friends

[1] The elementary school, where Appellant serves as a fifth grade science teacher, operates all year long.

and had delivered the wings to the students on a street in view of a security officer. At the conclusion of the school system's case, Appellant's attorney moved to dismiss the charges because there was no evidence that Appellant had done anything improper while working under his 2005-2006 contract. At the conclusion of the hearing, the hearing officer granted the motion to dismiss the charges. The Local Board, however, refused to abide by the hearing officer's dismissal and ordered the tribunal to make findings and a recommendation.

The tribunal recommended that Appellant should be suspended for thirty days without pay because of insubordination. The Local Board rejected the tribunal's recommendation and voted to terminate Appellant's contract. Appellant then filed an appeal to the State Board of Education.

On appeal, Appellant claims that there was no evidence to support his termination. The primary claim is that State Board of Education cases provide precedent that evidence of conduct that occurred in prior years cannot be used as the basis for dismissal in a subsequent year. The Local Board claims that it was seeking to terminate Appellant's 2004-2005 contract, notwithstanding the stipulation made at the beginning of the hearing and the fact that Appellant had started working in the 2005-2006 school year.

The State Board of Education has previously held that evidence of incidents that occurred before a contract renewal cannot be used to recommend against renewal in a subsequent year. *Peterson v. Brooks Cnty. Bd. of Educ.*, Case No. 1990-29 (Ga. SBE, Dec. 13, 1990), *rvs'd. on other grounds, Brooks Cnty. Bd. of Educ. v. Peterson,* Civil Action No. 91-CV-43 (Brooks Cnty. Sup. Ct. Aug. 2, 1991). In *Moulder v. Bartow Cnty. Bd. of Educ.*, 267 Ga. App. 339, 599 S.E.2d 495 (2004), the Court of Appeals held that evidence of prior year conduct could not be used to terminate a subsequent year contract. *See, also, Nelson v. Atlanta City Bd. of Educ.,* Case No. 2005-18 (Ga. SBE, Feb. 10, 2005)(evidence relating to previous school years cannot be used in a subsequent year.)

O.C.G.A. § 20-2-211(b) provides that if notice of an intended termination is not given to a teacher by April 15, "the employment of such teacher ... shall be continued for the ensuing school year unless the teacher ... elects not to accept such employment by notifying the local governing board ... in writing not later than May 1." O.C.G.A. § 20-2-211(b) (LexisNexis, 2005).

As noted by the tribunal hearing officer, Appellant did not notify the school system by May 1, 2005, that he was declining acceptance of employment for the 2005-2006 school year and his contract for the 2005-2006 school year was, therefore, renewed by operation of law. There was no evidence that Appellant did anything while working under his 2005-2006 contract that would permit the Local Board to terminate his 2005-2006 contract. All of the evidence presented by the Local Board related to incidents that occurred in previous years and one incident that occurred on November 4, 2004, none of which can be used as the basis for any action against Appellant under his 2005-2006 contract. The State Board of Education, therefore, concludes that the Local Board erred in rejecting the hearing officer's decision to dismiss the case.

The Local Board argues that since Appellant was given notice on March 7, 2005, *Moulder, supra,* is inapplicable and the charges can be carried forward into the new year. The Local Board's argument, however, fails factually because the Local Superintendent did not take any action before April 15, 2005, despite requests made by Appellant.[2] The Local Superintendent did not relieve Appellant from duty, did not issue a charge letter, and did not inform Appellant of any reasons why his contract should be terminated until May 17, 2005. On May 17, 2005, a charge letter was issued, but by then Appellant's 2005-2006 contract was in place because of the provisions of O.C.G.A. § 20-2-211(b).

If the incident had occurred during the period between April 15, 2005, and the end of the school year, and disciplinary action was immediately commenced, then an argument for carryover may be valid. *See, Shell v. Atlanta City Bd. of Educ.*, Case No. 1998-46 (Ga. SBE, Nov. 12, 1998). In *Shell*, termination proceedings began on May 1, 1998, and a hearing was held on June 24-25, 1998, before the start of the new year. The State Board of Education upheld the Local Board's decision to terminate the teacher's contract because of incompetency.

In *Boone v. Atlanta Independent School System*, Case No. 2003-29 (Ga. SBE, Sep. 11, 2003), *aff'd, Boone v. Atlanta Independent School System*, 275 Ga. App. 131, 619 S.E.2d 708 (2005), the State Board of Education held that the local board's failure to timely notify the teacher of the reasons for his non-renewal resulted in his contract being automatically renewed for the 2002-2003 school year. Before the State Board of Education issued its decision, the local board proceeded to hold a second hearing on the merits since its first hearing was limited to the question of whether the teacher's contract was automatically renewed. Following the second hearing, the local board terminated the teacher's contract because of chronic absences and the teacher did not appeal the decision. The Court of Appeals held that since the teacher did not appeal the local board's decision to terminate him, he could not claim that he was not bound by the local board's decision. The Court of Appeals, however, upheld the superior court's decision to award the teacher compensation for the 2002-2003 school year. *Boone*, therefore, may provide some support for the Local Board's argument for carryover, but it is of limited value since the teacher did not appeal the termination decision.

Even on the merits in the instant case, there was no evidence to support the Local Board's decision. The evidence showed that Appellant was the type of teacher who involved the parents of his students. He frequently bought lunches for his students, provided them with clothing and school supplies, visited them and their families in their homes, and bought them gifts for special achievements. All of these activities are regularly done by other teachers.

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[2] Notwithstanding the existence of O.C.G.A. § 20-2-940, the Local Superintendent initially took the position that a terminated employee did not have the right to a hearing or a notice of charges.

During the 2003-2004 school year, a parent complained about the interaction of Appellant with his daughter because he felt that Appellant was acting more like a "buddy" to the student, which he felt was inappropriate. Appellant's principal directed him to discontinue any personal contact with the student and to limit his interaction with female students.

On November 4, 2004, a former female student of Appellant's called him and asked him to buy her and her friends some chicken wings. Appellant had become friends with the student's family when she was a student of his and the family had started treating him as a member of their family. Appellant attended their gatherings, regularly bought lunches for the student, and gave her money when her mother did not have money. Appellant bought the chicken wings and delivered them to the apartment complex where the student lived. The student met him on the street with three of her friends, one of which was the student whose parents had complained and Appellant's principal had told him to avoid. Appellant talked with the student who asked him to purchase the chicken wings, but he did not talk with the student whose parents had complained.

A security guard at the apartment complex observed Appellant with the students. The security guard questioned Appellant and learned that he was a teacher. The security guard called Appellant's principal to verify that Appellant was a teacher and proceeded to relate what he had observed. The principal then proceeded to initiate disciplinary action based on her perception of insubordination and inappropriate social relations with female students.

The Local Board's policy on sexual harassment, Policy GAEB, prohibits sexual misconduct by employees, and defines sexual misconduct as any romantic relationship with a student. "Romantic relationship" is then defined as "being involved in an inappropriate social relationship ...." Based upon this definition, the tribunal found that Appellant engaged in inappropriate behavior with children and recommended his reassignment to a position that did not involve contact with children.

The Local Board's policy is overly broad in that sexual misconduct becomes whatever, in the eyes of the beholder, is deemed "inappropriate." Turning the act of buying chicken wings for former students into an act of sexual misconduct stretches credulity beyond the breaking point, even if the teacher is a male and the students are female. There was no suggestion that Appellant ever touched any students in a sexual manner or otherwise engaged in any activity that suggested a romantic or sexual relationship. The Local Board's policy, therefore, was unconstitutionally applied in this case.

Similarly, insubordination requires the knowing violation of a legal command of a superior. Although Appellant was directed by his principal to limit his interaction with female students, he was not told to completely avoid contact with female students. Additionally, there was no evidence that he was aware that the student he had been directed to avoid was going to be present when he delivered the chicken wings. The

school system, therefore, failed to show that there was a knowing violation of the principal's directive.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
REVERSED.

This _____ day of June 2006.

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William Bradley Bryant
Vice Chairman for Appeals