

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>GERALD NELSON,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2007-24</b>
	:	
<b>ATLANTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Gerald Nelson (Appellant) from a decision by Atlanta City Board of Education (Local Board) not to renew his teaching contract for the 2006-2007 school year.<sup>1</sup> Appellant claims there is no evidence to support the Local Board’s decision. The Local Board’s decision is reversed.

On February 9, 2006, Appellant was serving as a teacher when one of his students became unruly in the classroom and Appellant escorted him out of the classroom.<sup>2</sup> There were other students in the hallway, so Appellant took the student into a nearby restroom. Appellant reported the incident to the principal. The following day, an assistant principal conducted a preliminary investigation of the incident. The school system then outsourced an investigation of the incident to an outside agency and Appellant continued to teach.

On April 14, 2006, before the investigation was completed by the outside agency, the Local Superintendent notified Appellant that his contract would not be renewed. On June 8, 2006, the Local Superintendent issued an “updated notice of the revised reasons” for the issuance

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<sup>1</sup> This is the third appeal to the State Board of Education by Appellant in the past two years. In *Nelson v. Atlanta City Bd. Of Educ.*, Case No. 2005-18 (Ga. SBE, Feb. 10. 2005), the State Board of Education ruled that there was no evidence of willful neglect of duty or insubordination as a principal. The Local Board then attempted to treat the State Board of Education’s decision as a remand and issued an “amended decision” to dismiss Appellant. In *Nelson v. Atlanta City Bd. Of Educ.*, Case No. 2005-50 (Ga. SBE, July 14, 2005), the State Board of Education reversed the Local Board’s decision once again, ruling that its decision in Case No. 2005-18 was not a remand but a final decision that could only be appealed to the superior court.

<sup>2</sup> The Local Board had refused to install Appellant back to his position as a principal despite the two decisions by the State Board of Education. Appellant then went to superior court, which ordered the Local Board to reinstate Appellant to his position as a principal and awarded him back pay.

of the non-renewal notice.<sup>3</sup> The Local Superintendent charged Appellant with willful neglect of duty and any other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because of the February 9, 2006, incident.

A tribunal heard the charges beginning on July 19, 2006. Following three days of hearings, the tribunal concluded that the Local Board had failed to establish that Appellant had engaged in any inappropriate conduct and recommended that Appellant be returned to duty. The Local Board, however, rejected the tribunal's recommendation without explanation and decided not to renew Appellant's contract. Appellant then appealed to the State Board of Education.

Appellant claims that there was no evidence to support the Local Board's decision based upon the tribunal's findings. The tribunal found that Appellant did not engage in any inappropriate conduct when he took the student into the restroom after the student was being unruly in the classroom. The Local Board did not state any reasons why it was not accepting the recommendation of the tribunal to reinstate Appellant. "The basic findings of the [tribunal] are binding on a local board of education..." *Beard v. Laurens Cnty. Bd. of Educ.*, Case No. 1977-14 (Ga. SBE, Mar. 9, 1978). The local board is not required to accept the recommendation of the tribunal if the findings of fact made by the tribunal will support the local board's contrary decision. *See, Barker v. Twiggs Cnty. Bd. of Educ.*, Case No. 1978-34 (Ga. SBE, Feb. 8, 1979). The tribunal in the instant case did not make any specific findings that would permit the Local Board not to accept the tribunal's recommendation. The tribunal recited the testimony of the witnesses, but found much of the testimony unreliable. The tribunal concluded that Appellant had not violated any of the Local Board's policies and had not willfully neglected any of his duties. The State Board of Education, therefore, concludes that there is no factual basis for the Local Board's decision.

The Local Board argues that the fact Appellant took the student into the restroom, standing alone, is sufficient to support its decision not to renew his contract. The Local Board, however, cannot point to any policy that Appellant violated by taking a student into a restroom. At best, the Local Board's position substitutes a subjective standard that is unsupported by the tribunal's

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board failed to carry its burden of proof, its decision is arbitrary, capricious, and unsupported by the facts. Accordingly, the Local Board's decision is REVERSED.

This \_\_\_\_\_ day of March 2007.

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William Bradley Bryant  
Vice Chairman for Appeals

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<sup>3</sup> The original charge letter was not included in the record so the June 8, 2006, letter is the only basis for any charges against Appellant.