STATE BOARD OF EDUCATION

STATE OF GEORGIA

JACKIE DANIELS,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2007-33.**
	:	
WHITFIELD COUNTY BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Jackie Daniels (Appellant) from a decision by the Whitfield County Board of Education (Local Board) to terminate her teaching contract based upon insubordination, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. The charges arose from Appellant's alleged failure to fully disclose to her principal all of the facts involved concerning some students under her charge on a school-sponsored trip who smoked marijuana, ingested an unidentified pill, and engaged in some sexual activity. Appellant claims that she made adequate disclosure to her principal, she was not insubordinate, she did not willfully neglect her duties, and there was no other good and sufficient cause to dismiss her. The Local Board's decision is sustained.

In October 2006, Appellant, a drama teacher, accompanied several of her drama students to a competition in Macon, Georgia. Late on the evening of the first day of competition, October 19, 2006, a female student called Appellant and reported that some students were smoking marijuana in their room. Appellant went to the room and confronted the students. All five boys in the room denied using any drugs. Appellant searched the belongings of the students, but did not find any evidence of marijuana. Appellant took one of the students, J. W., to the room of the female students who made the initial report. J. W. admitted he knew that someone had brought some marijuana and that it had been in his guitar case, but he denied smoking any marijuana.

Appellant then returned to the room where the boys were staying and J. W. pointed out the students who he knew did not smoke any marijuana because they were not present in the room while the incident was supposed to have occurred. Appellant then learned that one student had given another student an unidentified pill and she confiscated one-half of the pill.

Appellant went back to the girls' room and learned that J. W. had been in a shower with a girl. When Appellant questioned the girl and J. W., they claimed they were only kissing. Appellant made both J. W. and the girl call their parents the next morning to explain what had occurred.

On Monday morning, October 23, 2006, Appellant reported to her principal and told him that she suspected several students had been smoking marijuana on the trip, but that she was unable to find any evidence. She told the principal that she had searched the students' belongings without finding anything. She told him that all of the students denied using marijuana, but she was certain that some of them had been smoking. She asked him to conduct an investigation and he said he would talk with the students. Appellant did not tell the principal anything about the unidentified pill or about the shower incident or that J. W. had said there was marijuana in his guitar case.

The principal directed Appellant to prepare a statement about what they had talked about in case any parent raised a question about Appellant conducting a search of the students' belongings. Appellant wrote a statement outlining her actions regarding the search of the students' belongings. In the statement, she did not say anything about J. W.'s admission that there was marijuana in his guitar case, about her discovery of a pill, or about the shower incident.

The principal did not take any action until Friday, October 27, 2006, after he received a telephone call from the parent of the female student who made the initial report to Appellant. The parent was angry that no action had been taken against the students who were smoking marijuana on the trip. The principal then called Appellant to confront her about a student admitting to having marijuana. Appellant became defensive and claimed she had told him everything on the previous Monday. Appellant told the principal about J. W.'s statement. She also told about the pill incident, but she did not say anything about taking up one-half of the pill. Following this conference, Appellant prepared another statement in which she said that J. W. had admitted that he brought marijuana in his guitar case. She did not say anything about the unidentified pill or the shower incident.

The principal continued to investigate and learned about the shower incident from the students. The students disclosed to the principal that J. W. and the girl had engaged in oral sex while in the shower.

The Local Superintendent decided to terminate Appellant's contract because she failed to fully disclose all of the information to her principal about the incidents that occurred. The Local Superintendent charged Appellant with insubordination, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Following a hearing before the Local Board, the Local Board voted to terminate Appellant's contract without making any findings of fact. Appellant then filed an appeal to the State Board of Education.

On appeal, Appellant claims that there was no evidence that she was insubordinate or that she willfully neglected her duties. The Local Board claims that Appellant's failure to fully disclose all of the facts when the principal directed her to prepare a statement of the incidents establishes that she was insubordinate. The Local Board also claims that Appellant's failure to report the shower incident and the student's confession about possessing the marijuana constituted a violation of Appellant's duties under the provisions of O.C.G.A. § 20-2-1184.

"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). At the same time, a local board of education has the burden of proof when it seeks to discharge a teacher. O.C.G.A. § 20-2-940(e)(4).

"Insubordination requires some willful disobedience of, or refusal to obey, a reasonable and valid rule, regulation or order issued by ... an administrative superior." *Woods v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-13 (Ga. SBE, June 13, 1991). "In order for an act to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate. Mere negligence or error does not constitute insubordination. Likewise, violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination. *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (1987). In the instant case, the principal initially directed Appellant to write a statement about what they had talked about because he was concerned about parents raising an issue about Appellant's searching the students' belongings. Appellant responded by preparing a statement that outlined that she received a report about drug usage, the denial by the students, and her search of their luggage. In the statement, she stated, "I am aware that they deserve punishment and consequences, but since no evidence was found, they remain under suspicion...." Appellant's statement covered what the two had talked about when she reported the incident. Appellant, therefore, cannot be deemed to have been insubordinate because of what she included in her first statement.

On Friday, October 27, 2006, after the parent had complained that one of the students had confessed to using drugs, the principal directed Appellant to prepare another statement to discuss the fact that someone had confessed to having marijuana. Appellant prepared another statement, in which she outlined that J. W. had told her that he had brought some marijuana in his guitar case and that some of the students had smoked the marijuana. Again, Appellant complied with the principal's directive. There was no showing that Appellant failed to follow the directives of her principal when she prepared her statements. The State Board of Education, therefore, concludes that the Local Board failed to carry its burden of proof that Appellant was insubordinate.

The phrase "willful neglect of duty" denotes a situation where there is "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct." *Terry v. Houston Board of Educ.,* 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986). "'Willfulness' requires a showing of more than mere negligence." *Id.*

The Local Board claims that Appellant failed to comply with O.C.G.A. § 20-2-1184, which requires a teacher to "immediately report the act ...to the principal" reasonable beliefs of certain criminal activities, including sexual offenses and drug possession, because she intentionally failed to report criminal violations. The record shows that Appellant did not immediately report the suspected marijuana usage, but, instead, waited four days before reporting the incident to her principal. Appellant had a statutory duty to report the suspected usage when she discovered the incident rather than waiting four days. Appellant also had a duty to report that a student had been given an unidentified pill because she did not know whether the pill was a prohibited drug. Because of her

failure to immediately report the incident to her principal, the State Board of Education concludes that there was evidence that Appellant willfully neglected a statutory duty.[1]

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence that Appellant willfully neglected her duties. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of April 2007.

_____
William Bradley Bryant
Vice Chairman for Appeals

[1] Although Appellant claims that the principal also failed to report the incident to the police and the district attorney, thus denying her equal protection of the law, the action taken by the Local Board against the principal for similarly failing to follow the statute is not before us, nor is there any evidence in the record of what action the Local Board has taken or may take against the principal.