

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

RONALD KING,

Appellant,

v.

**COBB COUNTY BOARD
OF EDUCATION,**

Appellee.

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CASE NO. 2008-70

DECISION

This is an appeal by Ronald King from a decision by the Cobb County Board of Education (“Local Board”) terminating his employment contract based upon allegations that he engaged in inappropriate sexual conduct towards a student and that he falsified his employment application. The Local Board concluded that Appellant’s conduct constituted incompetence, willful neglect of duties, immorality, and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(1), (3), (4) and (8).

Appellant asserts two errors: (1) the Local Board erred by relying upon inadmissible unauthenticated and hearsay evidence, and (2) the Local Board erred because the evidence does not support the conclusion that he engaged in incompetence, willful neglect of duties, immorality, and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(1), (3), (4) and (8). For the reasons set forth below, the decision of the Local Board is SUSTAINED.

I. PROCEDURAL BACKGROUND

On March 26, 2008, Appellant was notified that his employment contract was being terminated. A tribunal for the Local Board was convened at which Appellant was provided the opportunity to present evidence and to subpoena witnesses. On April 25, 2008, the tribunal unanimously concluded that Appellant engaged in insubordination, willful neglect of duties, and other good and sufficient cause in violation of O.C.G.A. § 20-2-940(a)(1), (3), (4) and (8). The falsification of the employment application charge was based upon Appellant’s representations on the application that he had never been asked to resign, never had a teacher credential denied, revoked or suspended in any state, and was not under investigation for unethical conduct. On May 14, 2008, the Local Board voted to terminate Appellant. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

On June 15, 2006, Appellant submitted an employment application with the Local Board. The Local Board subsequently offered Appellant a teaching contract for the 2006-2007 school year. Appellant accepted the contract and was employed as an In-School Suspension teacher and assigned to Cooper Middle School.

On or about February 29, 2008, the Local Board received a complaint that Appellant had made inappropriate and sexually suggestive comments towards a female student. An Investigations Manager for the Local Board was assigned to investigate the student's complaint. The Investigations Manager interviewed the student and Appellant. The Investigations Manager also reviewed Appellant's employment application, which led her to contact his former principal at the Monroe Board of Education in Alabama ("MBOE"). The Investigations Manager was told by the principal that Appellant had been asked to resign after allegations of sexual misconduct by a student. The Investigations Manager then contacted an officer of the Alabama Department of Education ("ADOE"), who told the Investigations Manager that Appellant had been accused of similar allegations while employed at Monroeville Junior High School. The Investigations Manager requested and was sent copies of records related to the MBOE student's allegations against Appellant. The documents included correspondence indicating that Appellant had been placed on suspension pending an investigation in the spring of 2006. The documents also included a settlement agreement entered into in October of 2006 between Appellant and ADOE in which Appellant agreed to a two-year suspension of his teaching license.

In March of 2006, the Director of Employee Relations met with Appellant. During this meeting, Appellant admitted that, in the spring of 2006, the MBOE placed him on administrative leave while under investigation for allegations of inappropriate sexual misconduct. Appellant further admitted that, in October of 2006, he entered a settlement agreement because of the allegations, resulting in the suspension of his Alabama teaching license for two years.

During the hearing, the Local Board failed to offer any evidence to support the charge that Appellant engaged in inappropriate sexual conduct towards the Cooper Middle School student. In fact, the student did not testify. The only testimony on this issue was the testimony of the Investigations Manager regarding her interview of the student.

During the hearing, the Local Board offered evidence that Appellant completed an application on June 23, 2006, representing that he had never been asked to resign, never had a teacher credential denied, revoked or suspended in any state, and was not under investigation for unethical conduct. On the resignation issue, the Local Board offered testimony from the Investigations Manager that she was told by Appellant's former principal that he had been asked to resign. On the teacher credential being denied, revoked or suspended, the Local Board offered evidence that, in October of 2006, Appellant entered into a settlement agreement agreeing to a two-year suspension of his Alabama teaching license. The Local Board did not offer any evidence showing that Appellant was required by the Local Board's rules to supplement his employment application. On the issue of being under investigation for unethical conduct, the

Local Board offered the testimony of the Investigations Manager and the documents she received from the ADOE. In addition, the Local Board offered the testimony of the Director of Employee Relations regarding his conversation with Appellant in which he admitted that, in the spring of 2006, the MBOE placed him on administrative leave pending investigation into sexual misconduct allegations.

III. ERRORS ASSERTED ON APPEAL

A. Sexual Misconduct.

The Local Board has the burden of proof in offering admissible evidence in seeking to dismiss a teacher. O.C.G.A. § 20-2-940(e)(4). The Local Board failed to offer any evidence to support the sexual misconduct charge. The only evidence offered was from the Investigations Manager testifying about what the student told her during her interview. This evidence is an out-of-court statement made by a person that was unavailable for cross-examination. See L.S. v. Carrolton City Bd. of Educ., Case No. 2007-58 (Ga. SBE, Oct. 2007). Hearsay evidence has no probative value and cannot be used to establish any fact in an administrative hearing. See McGahee v. Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 474 (1994); O.C.G.A. § 24-3-1. Thus, the Local Board's decision cannot be sustained on the sexual misconduct charge.

B. Falsification of Employment Application.

1. Evidentiary objections.

Appellant contends that the Local Board erred by allowing unauthenticated hearsay evidence regarding the similar allegations of sexual misconduct made against Appellant by the Monroeville student. Georgia law requires that records of public office or county of Georgia, at a minimum, contain a certification or attestation of a public officer. O.C.G.A. § 24-7-20; Matson v. Noble Investment Group, LLC, 288 Ga. App. 650, 656 (2007). This provision has been extended to public records of other States. Horner v. State, 257 Ga. App. 12, 15 (2002). The records offered by the Local Board were not certified or otherwise authenticated by an official from the MBOE. Thus, these records should have been excluded.

Appellant further contends that the records and testimony by the Investigations Manager about her conversations with the MBOE official is hearsay. As set forth above, this evidence was clearly inadmissible hearsay. While the Local Board initially asserted that this evidence was offered for course of conduct, the tribunal later accepted the evidence for the truth of the matter asserted and admitted all of MBOE documents. Moreover, the record does not support that the Investigations Manager's course of conduct was linked to the records, nor was it necessary to admit the records to show her course of conduct. Thus, the ADOE records should have been excluded.

However, the State Board finds that it was necessary for the Local Board to establish that Appellant had been under investigation for sexual misconduct in order to meet its burden that he had been under investigation for unethical conduct. Thus, if the record contains admissible evidence supporting the decision of the Local Board, then the admission of the inadmissible evidence was harmless error. M.H. v. Gwinnett Cnty. Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000). As set forth below, the State Board concludes that admissible evidence exists supporting the decision of the Local Board, and therefore the admission of the ADOE records was harmless.

2. Evidence supports the decision.

The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).

The State Board agrees that the Local Board did not offer admissible evidence regarding the falsification of the employment application on the issue of whether the Appellant had ever been asked to resign. Specifically, the only testimony offered by the Local Board was complete hearsay from the Investigations Manager of her conversation with the Monroeville Principal.

The State Board further agrees that the Local Board did not offer admissible evidence regarding the falsification of the employment application on the issue of whether the Appellant had a teacher credential denied, revoked or suspended in any state. Specifically, the record shows that Appellant completed his application in June of 2006. The record shows that Appellant's license was not suspended by the ADOE until October of 2006. The Local Board failed to provide evidence of any rule requiring Appellant to amend his application. Thus, the record does not support this charge.

However, the State Board finds that record evidence supports the Local Board's decision regarding Appellant's failure to disclose that he was under investigation for unethical conduct at the time he completed the June 2006 employment application. The record contains evidence that Appellant, in June of 2006, submitted an employment application with the Local Board. On the application, Appellant falsely stated that he was not under investigation for unethical conduct.¹ This statement was blatantly false. During the Local Board's investigation, Appellant admitted to the Director of Employee Relations that, in the spring of 2006, he was placed on administrative leave by the MBOE pending the investigation of allegations of sexual misconduct.

¹ Appellant offered evidence that his wife submitted the employment application. This evidence is irrelevant. Appellant obviously was aware the employment application was submitted on his behalf, as he subsequently accepted employment. Appellant cannot avoid his duty to honestly complete an employment application by asserting a family member completed the application.

Thus, the record contains sufficient evidence supporting the decision of the Local Board finding that Appellant falsified his employment application. This Board has upheld the termination of a teacher for misleading a local board with answers on an employment application. See Trecia Maupin v. Whitfield Cnty. Bd. of Educ., Case No. 2008-36 (Ga. SBE, May 2008).

In addition, the Appellant offered evidence showing that he had been non-renewed by the MBOE in March of 2006. Appellant failed to disclose this information as required by the employment application. While Appellant was not specifically charged with failing to disclose that he had not been renewed by a school system in his notice letter, this evidence further supports the decision of the Local Board that Appellant falsified his employment application.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is, therefore SUSTAINED.

This _____ day of September 2008.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS