

LASHUNDA HAWKINS,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2009-28
	:	
DEKALB COUNTY BOARD	:	DECISION
OF EDUCATION,	:	
	:	
Appellee.	:	

Appellant asserts three primary errors: (1) the Local Board's decision is not supported by the evidence or is arbitrary and capricious because "other good and sufficient cause" does not exist, (2) the Local Board erred because Appellant was not charged with verbal abuse, and (3) the Local Board's decision is not supported by the factual findings of the hearing tribunal. For the reasons set forth below, the decision of the Local Board is SUSTAINED.

Appellant was a fourth grade teacher at Flat Rock Elementary School. On or about February 20, 2008, after school was dismissed, Appellant left her purse in her classroom attended only by her daughter. A fourth grade student from another class entered her classroom and dumped the contents of her purse out on the floor.

According to the student's teacher, Appellant snatched the student by the shirt collar, and while pushing the student into her classroom, he fell on the desk. The student's teacher advised Appellant that she needed to let the student go before she hurt him. The student's teacher took the student back to her classroom. According to the student's teacher, the student was crying, so she sent him to the restroom to clean his face, and to then return to his classroom. Appellant intercepted the student when he was returning to his classroom. The student's teacher went to

look for him and found him lying on the floor under Appellant's desk crying in a push-up position. The student's teacher took the student back to her classroom and reported the matter to the school administration. The student's teacher characterized Appellant as being angry and mad during the incident. According to another teacher, Appellant pulled the student by the shirt and was talking loudly to the student.

Appellant denies that she threw the student against the wall, over the desk, or that she kicked him. Appellant admits that she grabbed the student by the shirt collar. Appellant admits that doing so violated the rules of the Local Board. Appellant admits that she brought the student back into her classroom to pick up her belongings from under her desk. Appellant admits that when she did so, she called the student out in front of her class, and stated "remember this child" or "look at him." Appellant admits that she acted improperly and inappropriately by bringing the student back into her classroom, calling the student out in front of her class, and stating "remember this child" or "look at him."

II. PROCEDURAL BACKGROUND

On or about May 6, 2008, the Superintendent timely notified Appellant that she was being proposed for termination based upon her unprofessional behavior and inappropriate physical contact with a student. On or about October 23, 2008, the Superintendent timely notified Appellant that she was also being proposed for termination for leaving her class unattended during the 2007-2008 school year.¹

Pursuant to O.C.G.A. § 20-2-940(e)(1), a tribunal for the Local Board was convened at which Appellant was provided the opportunity to present evidence and to subpoena witnesses. On November 7, 2008 and November 14, 2008, the three-member tribunal heard evidence regarding the Superintendent's reasons for the proposed disciplinary action.

On November 24, 2008, the tribunal issued a thorough and detailed written factual findings and recommendations. The tribunal unanimously determined that the Local Board did not carry its burden of proof regarding the charges of incompetence, insubordination, and willful neglect of duties. However, the tribunal found that the Local Board proved the charge of "other good and sufficient cause", finding that Appellant engaged in inappropriate physical contact, unprofessional behavior, and verbal abuse, which impaired her ability to function professionally in her employment position. See O.C.G.A. § 20-2-940(a)(4). The tribunal recommended that Appellant receive a forty (40) day suspension without pay and that she enroll in an Anger Management Course.

On December 15, 2008, the Local Board issued a written decision accepting the findings of fact of the tribunal, but decided to terminate Appellant for "other good and sufficient cause." On January 8, 2009, Appellant appealed the decision of the Local Board to the State Board of Education ("State Board").

¹ The Local Board stipulated to the dismissal of the amended charge during the hearing.

III. ERRORS ASSERTED ON APPEAL

A. The Evidence & Good and Sufficient Cause.

Appellant asserts that the evidence in the record does not support the Local Board's 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. 1976). Moreover, "[i]t is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." Labi v. Fulton County Bd. of Educ., Case No. 2008-21 (Ga. SBE, Feb. 2008), quoting David L. v. DeKalb County Bd. of Educ., Case No. 1996-1 (Ga. SBE, Apr. 1996). For the reasons set forth below, the State Board finds that the record does contain legally sufficient evidence to support the decision of the Local Board.

In this case, the record contains sufficient evidence showing that Appellant snatched the student by the shirt collar. The record further shows that Appellant knew this violated the rules of the Local Board. The record further shows that after the student's teacher removed the student from Appellant's classroom, she intentionally brought him back into her classroom. Appellant contends that she brought the student back into her classroom to pick up her belongings from under her desk. However, Appellant admits that when she did so, she called the student out in front of her class, and stated "remember this child" or "look at him." Appellant admits that she acted improperly and inappropriately by bringing the student back into her classroom, calling the student out in front of her class, and stating "remember this child" or "look at him." Thus, the decision of the Local Board is supported by legally sufficient evidence.

Appellant asserts that the Local Board acted arbitrarily and capriciously by finding that this conduct constitutes "good and sufficient cause." Appellant relies upon Cooper v. Atlanta City Bd. of Educ., Case No. 2005-08 (Ga. SBE, Nov. 2004) for the proposition that "good and sufficient cause" is not a catch-all phrase for a local board to arbitrarily find a reason to terminate an employee. Appellant further asserts that "good and sufficient cause" is limited to actions that "adversely impact on the employee's ability to be effective." However, in Cooper, this Board held "that 'any other good and sufficient cause' . . . relate[s] to causes arising from actions or inactions by the employee."² Id. The record in this case clearly shows that the Local Board's

² Appellant erroneously narrowly construes the holding of the Cooper decision. In any event, the tribunal as the finder of fact, concluded that Appellant's actions impaired her ability to function professionally in her employment position. Given Appellant's admitted inappropriate conduct with a student, sufficient evidence exists showing that Appellant's actions adversely impacted her ability to be effective.

decision was based upon Appellant's actions, and the Local Board did not arbitrarily find a reason to terminate Appellant under the good and sufficient cause provision.

Furthermore, this Board recently held that "it is axiomatic that 'good and sufficient cause' must be construed consistently with the other grounds for discipline contained in the Fair Dismissal Act." See Beale-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008). In so holding, this Board concluded that intentional or willful misconduct is "good and sufficient cause" under the Fair Dismissal Act. Id. As set forth above, sufficient evidence exists in the record supporting that the Local Board had good and sufficient cause to terminate Appellant.

Appellant further contends that her conduct does not violate Standard 2 and Standard 10 of the Code of Ethics because her conduct did not impair her ability to function professionally. Standard 2 states that "[a]n educator should always maintain a professional relationship with all students", including physical and verbal abuse, and any act of cruelty. Ga. R. & Regs. r. 505-6-01(3) (b)(6) (2003). In addition, Standard 10 states "[a]n educator should demonstrate conduct that follows generally recognized professional standards." Ga. R. & Regs. r. 505-6-01(3) (j) (2003).

In support of her contention, Appellant relies upon Professional Standards Commission v. Peterson, 284 Ga. App. 424 (2007) for the proposition that her conduct did not violate Standard 10 because her conduct did not impair her ability to function professionally in her employment position. Appellant's reliance upon Peterson is misplaced. The teachers in Peterson were only charged with violating Standard 10 of the Code of Ethics. In fact, in his concurrence, Judge Andrews concluded that the teachers' conduct violated Standard 2 of the Code of Ethics, but they had not been charged with a violation of Standard 2. Peterson, 284 Ga. App. at 429.

In this case, Appellant was charged with violating both Standard 2 and Standard 10 of the Code of Ethics. Based upon the record in this case, sufficient evidence exists to support the Local Board's conclusion that Appellant violated Standard 2 by failing to maintain a professional relationship with the student. Thus, the decision of the Local Board must be upheld.

B. Notice of the Verbal Abuse Charge.

Appellant asserts that the Local Board's decision is erroneous because the tribunal found that Appellant engaged in verbal abuse, which was not in the notice of charge letter. However, the notice of charge letter and amended notice of charge letter both provide Appellant notice that she was charged with physical and verbal abuse in violation of Standard 2 of the Code of Ethics of the Education Profession. Appellant was also provided with the factual basis giving rise to these allegations. Therefore, this alleged error is without merit.

C. Local Board's Decision and the Tribunal's Findings.

Appellant asserts that the Local Board erred because it rejected the recommendation to suspend Appellant and had made a predetermination to terminate Appellant. Appellant relies upon Balthorp v. Bd. of Educ. For the City of Savannah and County of Chatham, Case No. 1983-20 (Ga. SBE, Sep. 1983). However, in Balthrop, this Board held that the factual findings of the tribunal are binding on a local board, and that the local board retained the authority to make the decision of whether the factual findings supported the charges. Thus, a local board "cannot determine any facts based upon an independent review of the record since it relinquished the fact-finding mission to the tribunal." Tookes v. Atlanta City Bd. of Educ., Case No. 2005-31 (Ga. SBE, May 2005). However, a local board has the authority to rely upon the factual findings and impose a punishment greater than that recommended by the tribunal when notice of the greater punishment is provided to the teacher. See Bynum v. Cobb County Bd. of Educ., Case No. 2009-19 (Ga. SBE, March 2009); Rabon v. Bryan County Bd. of Educ., 173 Ga. App. 507 (1985).

In this case, Appellant was provided notice that she was being proposed for termination due to her conduct. The tribunal made factual findings that Appellant engaged in inappropriate physical contact, unprofessional behavior, and verbal abuse. The tribunal concluded that Appellant's conduct constituted "good and sufficient cause." The Local Board accepted these factual findings and decided to terminate Appellant. The Local Board is vested with the statutory authority to do so. Therefore, this alleged error is without merit.

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 April 2009.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS