

STATE BOARD OF EDUCATION

STATE OF GEORGIA

REUBENA WHITTED,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2009-42
	:	
FULTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Reubena Whitted (Appellant) from a decision by the Fulton County Board of Education (Local Board) to dismiss her under the provisions of O.C.G.A. § 20-2-940 on the grounds that she was insubordinate, willfully neglected her duties as a teacher, and for other good and sufficient cause. Appellant claims there was no evidence to show that she was either insubordinate or willfully neglected her duties. The Local Board’s decision is sustained.

Appellant, who has taught for 15 years, was employed by the Local Board as a kindergarten teacher. On October 20, 2008, Appellant’s principal placed her on a professional development plan (PDP) because she had persistently been late for work. Later, the Local Board suspended Appellant because of her tardiness. When Appellant returned to work on December 15, 2008, her principal presented her with another PDP that had six specific objectives for improvement, 15 required activities, 6 support activities, and 5 measurements of progress. One of the support activities provided that the curriculum support teacher would videotape Appellant’s teaching once a week for six weeks, beginning January 8, 2009.

On January 5, 2009, Appellant met with her principal and the curriculum support teacher to discuss several items on the PDP. Shortly after the meeting started, Appellant made a statement that lies were told during the hearing that led to her suspension. The principal and the curriculum support teacher were the witnesses during the hearing regarding the suspension, so the principal told Appellant he did not like her calling him a liar. Appellant persisted in arguing with the principal and the principal terminated the meeting.

On January 8, 2009, the curriculum support teacher arrived at Appellant’s classroom to videotape her instruction. Appellant, however, refused to allow her students to be videotaped because she believed that the parents of all of her students needed to approve any videotaping and she knew that two or three of her students’ parents had not approved videotaping. Appellant had expressed her understanding of school policy

regarding videotaping before January 8, 2009, and her principal had informed her that the policy concerning parental approval of videotaping was inapplicable in a teaching situation; it only applied to promotional videos that would be distributed outside the school.

The Local Superintendent charged Appellant with insubordination, willful neglect of duty, and other good and sufficient cause and informed Appellant that her contract would be terminated because of her failure to permit the videotaping and failure to perform other parts of the PDP. Appellant requested a hearing, which was held on January 29, 2009, before a four-member tribunal.

The tribunal found that Appellant was insubordinate and willfully neglected her duties because (1) she did not permit the videotaping of her teaching, (2) she was defiant and accusatory during the January 5, 2009, meeting, and thus failed to adhere to the PDP directive that she was to display professional behavior at all times with parents and staff, (3) she failed to implement items in the PDP, such as: (i) she did not use small group rotations, (ii) she did not use a prescribed classroom management program, (iii) she did not adhere to the prescribed classroom schedule, and (iv) she did not use the Bag Book library program as required. The tribunal recommended the termination of Appellant's contract, which was accepted by the Local Board. Appellant then appealed to the State Board of Education.

Appellant claims that there was no evidence that she was insubordinate or willfully neglected her duties. The Local Board claims that Appellant's refusal to permit the videotaping, after being informed that her interpretation of the school policy was wrong, constituted insubordination. The Local Board also argues that Appellant's failure to comply with the terms of the PDP constituted insubordination and willful neglect of duty.

"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).

"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 (Feb. 12, 1987).

The terms "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; something more must be shown than mere negligence. *Terry v. Houston Board of Educ.*, 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986). “[T]o sustain the charge of willful neglect of duties, a local board of education has to establish that the teacher or employee knowingly undertook to avoid performing assigned or expected duties.” *McLeod v. Gordon Cnty. Bd. of Educ.*, Case No. 1982-21 (Ga. SBE, Jan. 13, 1983).

In the instant case, there was evidence that Appellant intentionally disobeyed her principal’s directive to permit her teaching to be videotaped. Although Appellant protested the videotaping as being against school policy, her principal pointed out to her that the policy was applicable only when the videotaping was for promotional purposes. The principal’s directive was a valid, legal directive to Appellant and she chose to disobey the directive.

There was also evidence that Appellant was insubordinate when she accused her principal and curriculum support teacher of lying in her suspension hearing and refused to discuss the other issues the principal wanted to discuss.

Regarding the charge of willful neglect of duty, there was evidence that Appellant had not implemented the Book Bag program, the classroom management program, or the small group program in the seven days she taught after returning from her suspension until she was charged. Such evidence, however, does not rise to a showing of willful neglect of duty since there was no showing that Appellant willfully refused to undertake these duties. Although Appellant’s principal monitored her teaching for approximately one hour during the seven days, he did not inform her that there was any problem about her Book Bag program, use of small groups, or classroom management. Appellant had taught for 15 years without any negative evaluations of her teaching methods. While she may have been negligent in not implementing all of the changes that were thrust upon her when she returned from her suspension, the Local Board did not show that she intentionally refused to implement the changes.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence that Appellant was insubordinate. Accordingly, the Local Board’s decision to terminate Appellant’s teaching contract is SUSTAINED.

This _____ day of June 2009.

William Bradley Bryant
Vice Chairman for Appeals

SUMMARY

This is an appeal by Reubena Whitted (Appellant) from a decision by the Fulton County Board of Education (Local Board) to dismiss her under the provisions of O.C.G.A. § 20-2-940 on the grounds that she was insubordinate, willfully neglected her duties as a teacher, and for other good and sufficient cause. Appellant claims there was no evidence to show that she was either insubordinate or willfully neglected her duties. The Local Board's decision is sustained.