

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

NATHAN GRIGSBY,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2009-62
	:	
DEKALB COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Nathan Grigsby from a decision by the DeKalb County Board of Education (“Local Board”) terminating his employment contract. The Local Board terminated Appellant, finding that he failed to maintain proper discipline and management of his classroom when he allowed three male students to perform a sexually explicit dance in front of his classroom. The Local Board concluded that Appellant’s conduct constituted incompetency, insubordination, willful neglect of duties, immorality, and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(1)(2), (3), (4) and (8).

Appellant asserts three errors on appeal: (1) the Local Board failed to provide detailed documentation of his deficient performance, and that he had never been placed on a Professional Development Plan (“PDP”); (2) the Local Board admitted written statements of students who did not attend the hearing; and (3) the Local Board failed to provide Appellant the names of the Board members who were present and voted to accept the finding of the hearing tribunal.¹ For the reasons set forth below, the decision of the Local Board is sustained.

I. PROCEDURAL BACKGROUND

Appellant was employed as a teacher at Southwest DeKalb High School (“Southwest DeKalb”). On or about January 16, 2009, Appellant was timely notified that his annual contract for the 2008-2009 school-year was being proposed for termination. On or about March 16, 2009, Appellant was issued an amended notice regarding his proposed termination. Appellant appealed his proposed termination from employment. A tribunal for the Local Board was convened, at which Appellant was provided the opportunity to present evidence and to subpoena witnesses. On April 2, 2009, the tribunal concluded that Appellant engaged in incompetency, insubordination, willful neglect of duties, immorality, and other good and sufficient cause as defined by O.C.G.A. § 20-2-940(a)(1-4) and (8). The tribunal further recommended terminating

¹ Whether Appellant is entitled to know which Local Board members were present and how they cast their votes is irrelevant to whether the Local Board erred in its decision to terminate Appellant. Therefore, this alleged error requires no further discussion.

the Appellant. On May 4, 2009, the Local Board adopted the recommendation of the tribunal and terminated Appellant's employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education ("State Board").

II. FACTUAL BACKGROUND

Appellant was a teacher at Southwest DeKalb for approximately eight (8) years. Appellant taught chorus classes. On Fridays, the Appellant allowed what he called "pass the mic day." On "pass the mic day," students chose a song and sang and danced to it. On December 11, 2008 during "pass the mic day," three male students chose a song called "Meeting in the Bedroom," which contains sexually explicit language. The three students chose this song from Appellant's computer and Appellant played the song.

As the three students sang and danced, they began to engage in sexually explicit conduct. Specifically, they improperly touched female students, gyrated on female students, removed their pants and shirts, performed lap dances, had their chests rubbed by female students, and simulated sex. These events occurred while Appellant was in the classroom. A student recorded the event on her cell phone video camera. After watching the video at the hearing, Appellant describes the video as hard porn.

The video was posted on the internet and a parent learned about it over the Christmas break. The matter was brought to the attention of the Local Board. The Local Board investigated the matter. The investigation led to the suspension of Appellant and the charges that led to his termination.

III. ERRORS ASSERTED ON APPEAL

1. Professional Development Plan (PDP).

Appellant asserts that the Local Board erred because it failed to provide him with documents regarding his deficient performance and never placed him on a PDP. Appellant has failed to cite any legal authority supporting his assertion that a Local Board is required to place a teacher on a PDP before terminating a teacher who is accused of incompetency, insubordination, immorality, willful neglect of duties, and other good and sufficient cause. Thus, this alleged error is without merit.

2. Admission of Student Statements.

Appellant asserts that the Local Board admitted into evidence statements² of witnesses who did not testify. It appears that Appellant is asserting that these statements are hearsay. 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). Thus, since the Local Board has the burden of proof in seeking to dismiss a teacher, hearsay evidence cannot be relied upon. O.C.G.A. § 20-2-940(e)(4). However, 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).

In the case sub judice, the Local Board offered into evidence statements made by students who did not testify. These statements are hearsay and cannot be relied upon for the truth of the matter. However, the Local Board also offered testimony of witnesses who testified to the sexually explicit conduct exhibited by the three male students. Specifically, witnesses testified to the conduct of the three male students who improperly touched female students, gyrated towards female students, removed their pants and shirts, performed lap dances, had female students rub their chests, and simulated sexual gestures. More importantly, these events are contained on the videotape, which was stipulated to by Appellant. Appellant was present during the class and allowed these events to occur. Thus, the record contains more than sufficient admissible and probative evidence supporting the Local Board's decision. Therefore, the admission of the inadmissible statements was harmless error. M.H. v. Gwinnett Cnty. Bd. of Educ., Case No. 2000-37 (Ga. SBE, Sep. 2000). For these reasons, this alleged error is without merit.

3. 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). 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.

² Appellant also asserts that the Local Board rewrote the written statements before tendering them into evidence. However, Appellant has failed to provide any evidence to support this assertion. Thus, this assertion is without merit.

The record contains more than sufficient evidence showing that Appellant allowed three male students to perform a sexually explicit dance in front of his classroom. In addition, there is more than sufficient evidence showing that Appellant failed to maintain proper discipline and management of his classroom. Thus, the Local Board's decision to terminate Appellant for incompetency, insubordination, willful neglect of duties, immorality, and other good and sufficient cause under O.C.G.A. § 20-2-940(a)(1)(2), (3), (4) and (8), is supported by the record. See Brawner v. Marietta City Bd. of Educ., 285 Ga. App. 10, 646 S.E.2d 89 (2007); Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986); Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008).

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 October 2009.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS