

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| NATHAN GRIGSBY, | : | |
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| Appellant, | : | |
| | : | CASE NO. 1996-24 |
| vs. | : | |
| | : | DECISION |
| CITY OF ATLANTA | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | |

This is an appeal by Nathan Grigsby (Appellant) from a decision by the City of Atlanta Board of Education (Local Board) to suspend him without pay for five days after a tribunal found that he improperly struck a student. Appellant claims that his actions did not violate any policies of the Local Board and the suspension proceedings should have been dismissed because he was improperly relieved from his teaching position without a hearing. The Local Board's decision is reversed.

At the end of the school day on December 15, 1995, Appellant, who was a band and music teacher at King Middle School, was collecting music from his students. As the students filed by with their music sheets, he took the music sheets and placed them into separate stacks on the floor. One of Appellant's students ran by and kicked over the stacks of music. Appellant had previously spoken to the Student and told him to sit down. Appellant reached out and grabbed the student. In the process, Appellant's hand grazed or struck the student in the chest. Appellant told the student to pick up the papers. A teacher and two parents witnessed the incident and did not see anything about it that raised any concerns in their minds. Appellant similarly did not think too much about the incident and did not report it to the principal. The student, and his brother, left the classroom and went to the principal's office to report the incident. The principal was unavailable and the students returned to the band room. They told their mother about the incident when they arrived home. The student's mother reported the incident to the principal the next day.

The principal interviewed Appellant and asked him to provide a statement. Appellant wrote, "I reached at [the student] to pull him away from the music, when reaching to grab his arm, I accidentally hit him in the chest." The principal reported the incident to the central office. Appellant was relieved from his teaching duties and transferred to the Policy Analysis section in the central office on December 19, 1995. On February 9, 1996, the Local Superintendent charged Appellant with incompetence, willful neglect of duty, any other good and sufficient cause, and unethical conduct in the assessment, treatment, instruction or

supervision of students. The Local Superintendent informed Appellant that he would recommend a thirty-day suspension without pay unless Appellant requested a hearing before the Local Board. Appellant requested a hearing.

On March 22, 1996, a three-person tribunal conducted a hearing on behalf of the Local Board, pursuant to the provisions of O.C.G.A. § 20-2-940(e)(1). The tribunal found that Appellant did not intentionally strike the student, but he did hit the student and grabbed his arm, and his actions were taken in anger. The tribunal further found that, "Running in a classroom and kicking at a stack of papers does not appear to suggest any need for physical force." The tribunal also found that Appellant failed to report the incident to the principal as required by Local Board policy. As a result, the tribunal decided that the evidence established willful neglect of duties and other good and sufficient cause to suspend Appellant. There was testimony given that Appellant called the student a "sissy" for reporting the incident and the tribunal found that such a statement was unprofessional and violated the Code of Ethics. The tribunal recommended a five-day suspension without pay, which the Local Board approved when Appellant appealed. Appellant then filed an appeal with the State Board of Education.

On appeal, Appellant argues that 1) the Local Board denied him procedural due process by not conducting a hearing within ten days after removing him from his teaching position; 2) the evidence failed to support the charges since an unintentional act cannot serve as the basis for willful neglect of duties and the Local Board's policy permits the use of restraint when prior directives do not change a student's conduct, and 3) the recommendation was based on a faulty investigation because adult witnesses were never interviewed before a recommendation was made.

O.C.&A. § 20-2-940(g) provides, in part:

The superintendent of a local school system may temporarily relieve from duty any teacher ... for any reason specified in subsection (a) [of Section 20-2-940], pending hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher... could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel Such action by the superintendent shall not extend for a period in excess of ten working days, and during such period it shall be the duty of the local board to conduct a hearing on the charges in the same manner provided for in subsections (e) and (f) of this Code section, except that notice of the time and place of hearing shall be given at least three days prior to the hearing. During the period that the teacher... is relieved from duty prior to the decision of the local board, the teacher ... shall be paid all sums to which he is otherwise entitled. If the hearing is delayed after the ten-day period ... at the request of the teacher ... then the teacher ... shall not be paid beyond the ten-day period unless he is reinstated by the local board, in which case he shall receive all compensation to which he is otherwise entitled.

O.C.G.A. § 20-2-943(b) provides:

Nothing in this part shall be construed as depriving local boards of education from assigning and

reassigning teachers ... from one school to another or from assigning and reassigning teachers to teach different classes or subjects.

A local board of education cannot use a transfer as a punitive or disciplinary procedure. *See, Wilner v. Fulton Cnty. Bd. of Educ.*, Case No. 199 1-6 (Ga. SBE, Apr. 11, 1991), *aff'd*, *Fulton Cnty. Bd. of Educ. v. Wilner*, Case No. D-90210 (Fulton Sup. Ct., Jul. 2, 1991).

The Local Board argues that the provisions of O.C.G.A. § 20-2-943(b) permitted the Local Superintendent to relieve Appellant from his teaching duties and transfer him to the Policies Division without providing him a hearing. The Local Board also argues that the provisions of O.C.G.A. § 20-2-940(g) apply only when a teacher is relieved of all duties within the school system. We disagree.

The argument advanced by the Local Board deprives O.C.G.A. § 20-2-940(g) of all meaning, i.e., the Local Board's argument eliminates the need for a speedy resolution in those situations where the teacher's conduct is deemed to be so serious that the teacher has to be relieved from duty. The Local Board's reasoning permits a local board to make punitive transfers, which is prohibited under our decision in *Wilner, supra*. O.C.G.A. § 20-2-940(g) requires a hearing within ten days whenever a teacher is temporarily relieved "from duty". The section does not, by its terms, require relief from all duties, as argued by the Local Board.

In the instant case, more than ten days elapsed from the time Appellant was relieved from his duty as a band and music teacher and transferred to the Policy Analysis Division on December 19, 1995, until a hearing was held on March 22, 1996. The only reason he was transferred was because the administration felt the charges were serious enough that it was necessary to remove Appellant from any contact with students. This is precisely the situation for which O.C.G.A. § 20-2-940(g) was enacted. The State Board of Education concludes that the Local Board denied Appellant procedural due process by failing to conduct a hearing within ten days.

Appellant also claims that the evidence was insufficient to sustain the charges. The Tribunal found that Appellant's actions constituted willful neglect of duty and other good and sufficient cause. Willful neglect of duty requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct." *Terry v. Houston Cnty. Bd. of Educ.*, 178 Ga. App. 296, 342 S.E.2d 774 (1986). The Tribunal, however, found that Appellant's actions were unintentional. The only basis for finding that willful neglect of duty existed is if Appellant's action was a flagrant act, which denotes some action of a shocking or outrageous nature. The reaching out and grabbing hold of a student, who has previously been told to sit down, in a manner that two other adults, one a teacher and the other a parent, thought completely inconsequential hardly rises to the level of being a flagrant act. The Local Board's policy against the use of physical force recognizes that there are instances when a teacher can touch a student and it specifically states that it is designed to eliminate the "you can't touch me" attitude of some students. The State Board of Education, therefore, concludes that Appellant's action did not constitute willful neglect of duty.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board denied Appellant procedural due process and the Local Board failed to carry its burden of proof to show that Appellant willfully neglected his duty. Accordingly, the Local Board's decision is REVERSED.

This 12th day of September, 1996.

Ms. Julie D. Keeton and Mr. A. Joe McGlamery were not present. The seat for the Eleventh District is vacant.

Robert M. Brinson
Vice Chairman for Appeals