

STATE BOARD OF EDUCATION

STATE OF GEORGIA

BETSY MORGAN,	:	
	:	
Appellant,	:	
	:	CASE NO. 1996-35
vs.	:	
	:	DECISION
CITY OF ATLANTA	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Betsy Morgan (Appellant) from a decision by the Atlanta Board of Education (Local Board) to terminate her contract after a tribunal found that she was incompetent, insubordinate, willfully neglected her duties, and other good and sufficient cause existed to terminate her contract. Appellant claims several errors in the conduct of the hearing and that the evidence did not establish incompetency, insubordination, willful neglect of duty, or other good and sufficient cause for termination. The Local Board's decision is sustained.

Charges were made against Appellant that on November 8, 1995, she pushed a child from the back and the student fell over a desk. After an investigation was made, a recommendation was made to place Appellant on a twenty-day suspension without pay. Appellant refused to accept the twenty-day suspension and requested a hearing on the matter. On March 13, 1996, the Local Superintendent wrote to Appellant that he was recommending termination of her contract as a sixth grade teacher on the grounds of incompetency, insubordination, willful neglect of duty, and any other good and sufficient cause because of the incident, and because of a pattern of rude, insulting, and unprofessional conduct towards students and parents and unprofessional and insubordinate conduct with supervisors.

A hearing was held by a tribunal on April 3 and 4, 1996. The tribunal found that Appellant had pushed the student, who fell over his desk and hit the back of his leg against the chair. When the student asked Appellant why he pushed her, she replied, "so take me to court." The tribunal found that there had been previous incidents where Appellant grabbed students in anger and shook them with force.

The tribunal found that Appellant, as a language arts instructor, acted unprofessionally with her students' parents and her actions were deemed unacceptable by her principals during both the 1994-1995 and the 1995-1996 school year. Appellant's principal during the 1994-1995 school had prepared a personal development plan for Appellant, but it was not instituted because Appellant transferred to a new school for the 1995-1996 school year.

The tribunal decided that Appellant's actions towards her students, her inability to manage her classroom, and her use of instructional time demonstrated serious incompetency. The tribunal also found that Appellant's use of physical force constituted willful neglect of duty and insubordination because she had previously been warned against using physical force with her students. The tribunal further found that Appellant's frequent loss of temper during parent conferences and in conferences with her supervisors provided other good and sufficient cause to terminate her contract. The tribunal recommended termination of Appellant's contract and the Local Board adopted the recommendation. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that she was denied procedural due process because the Local Board would not release the files of the students who testified against her. The Local Board denied Appellant's request based upon its understanding of the "Buckley Amendment", 20 U.S.C. § 1232g. Appellant claims that she had the right to the files under the holding in *Red & Black Pub. Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 848 (1993). Notwithstanding her inability to access the students' records, Appellant was given the opportunity to examine and cross-examine the students about their interactions with Appellant. Appellant has not shown any harm, nor has she shown any right to access the records of the students who testified. The opinion in *Red & Black Pub. Co.* is inapplicable to the instant case because of the different factual circumstances.¹ The State Board of Education, therefore, concludes that it was not error to deny Appellant access to the students' records.

Appellant also claims that it was error not to allow her to submit the testimony of a Department of Family and Children Services caseworker who found that Appellant had not violated any child abuse laws of the State. The State Board of Education concludes that the hearing officer properly excluded such evidence as irrelevant because of the different standards involved in an administrative proceeding and a criminal proceeding.

Appellant claims that it was error to admit evidence concerning a 1981 incident when Appellant physically grabbed a student. Evidence from prior contract years is not admissible unless it shows some pattern of conduct. See, *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, 1987). One of the principal allegations in the instant case was that Appellant pushed a student. Evidence of prior instances of physical contact with students goes to show a pattern of conduct of physical abuse of students and, therefore, is admissible. The State Board of Education concludes that the hearing officer did not err in admitting such evidence.

Appellant also claims that there was no credible evidence that she pushed the student, and that there were irreconcilable conflicts between the testimonies of the students who testified. It is the duty of the trier of fact to assess the credibility of the witnesses and resolve conflicts in testimony. "The standard for review by the State Board of Education is that if there is any

¹ *Red & Black Pub. Co. v. Bd. of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993), involved access to the disciplinary records of college social fraternities that were compiled by a student judicial panel.

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 (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. 199 1-14 (Ga. SBE, Aug. 8, 1991). There was evidence that Appellant pushed the student, that she cursed her students and cursed in front of parents, that she failed to obey the instructions of her supervisors, and was unable to control her classroom or provide them with meaningful instruction. The State Board of Education, therefore, concludes that there was evidence to support the findings made by the tribunal and the Local Board and Appellant's claims are without merit.

Appellant also makes several unsupported claims of error in the conduct of the hearing without citation to any case, statute, regulation, or other precedent. The State Board of Education concludes that none of these claims has any merit.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant procedural due process and that there was evidence to support the Local Board's decision to terminate Appellant's contract. Accordingly, the Local Board's decision is
SUSTAINED.

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