

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID JOHNSON, :
:
Appellant, :
:
vs. : **CASE NO. 2000-27**
:
TIFT COUNTY :
BOARD OF EDUCATION, :
:
Appellee. : **DECISION**

This is an appeal by David Johnson (Appellant) from a decision by the Tift County Board of Education (Local Board) to suspend him, with pay, until the end of the 1999-2000 school year from his position as assistant principal after finding him guilty of insubordination and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because of remarks he made to a newspaper reporter about the administration of the high school. Appellant claims that the Local Board's action infringed upon his right of free speech under the First Amendment to the Constitution of the United States. The Local Board claims that the issues raised on appeal are moot because the suspension period is over and Appellant is no longer employed by the Local Board. The Local Board's decision is sustained.

The Local Board employed Appellant as an assistant principal at the beginning of the 1999-2000 school year. In March 2000, Appellant was informed that he would not be recommended for contract renewal. Appellant then submitted his resignation, to be effective at the end of the school year, which the Local Board accepted. Shortly thereafter, a newspaper reporter called Appellant and asked for an interview to discuss his resignation. Appellant granted the interview.

On March 18, 2000, an article appeared in the local newspaper that discussed Appellant's resignation. The headline for the article was, "Principal rips school system." In the article, Appellant claimed there was no consistency in discipline because the principal rescinded his disciplinary actions upon orders of the Local Superintendent when the discipline involved friends of the Local Superintendent's son. Appellant also allegedly said that policies made at the school changed from day to day and from situation to situation. Appellant also complained to the reporter that he was supposed to be paid a higher salary than the Local Board was paying him and he was supposed to have had a two-year contract rather than a one-year contract. On March 23, 2000, the Local Superintendent charged Appellant with insubordination and other good and sufficient cause and suspended him with pay pending a hearing under the provisions of O.C.G.A. § 20-2-940.

The Local Board held a hearing on the charges and determined that Appellant was insubordinate because the allegations he made in the newspaper article were untrue and there was other good and sufficient cause for action. The Local Board suspended Appellant with pay until the end of his contract term. Appellant then appealed to the State Board of Education.

Appellant contends that he was not insubordinate in voicing his opinion about the operation of the school and the Local Board's action infringed on his right of free speech. The Local Board argues that since Appellant's statements were untrue, Appellant was insubordinate.

In *Pickering v. Board of Education*, 391 U.S. 563 (1968), the United States Supreme Court held that a public employee's speech is protected to the extent it is true and deals with issues of public importance. In the instant case, the Local Board established that much of what Appellant said was false. Since the speech was false, it was not protected by the First Amendment. Accordingly, the Local Board did not infringe upon Appellant's rights of free speech.

Appellant contends he was not insubordinate because there were no policies that prevented him from talking with the press. The Local Board argues that it is insubordinate to publicly and falsely accuse one's superiors of incompetency and dishonesty in the performance of their duties. The State Board of Education has limited insubordination to overt disobedience of a lawful directive from a superior. See, e.g., *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, 1987). In the instant case, Appellant did not disobey an order or directive of any superior. Although his statements were false, the State Board of Education concludes that Appellant was not insubordinate.

There was, however, other good and sufficient cause for the Local Board to suspend Appellant. The Local Board showed that Appellant failed to investigate situations to determine the facts, but, instead, chose to attribute false motives, attributes, and actions to the people he was supposed to work with. He then publicized his false conclusions, which had the effect of holding the principal and superintendent up to public ridicule and contempt, thus undermining their ability to provide leadership in the school system. At a minimum, there was evidence from which the Local Board could determine that Appellant displayed unprofessional conduct under the Code of Ethics for Educators¹. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision.

¹ Standard 10 of the Code of Ethics provides: "An educator should demonstrate conduct that follows generally recognized professional standards. Unethical conduct is any conduct that seriously impairs the [professional's] ability to function professionally in his or her employment position..."

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant any of his rights of free speech and there was evidence to support the Local Board's decision to suspend Appellant, with pay, for other good and sufficient cause. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of September 2000.

Bruce Jackson
Vice Chairman for Appeals