

STATE BOARD OF EDUCATION

STATE OF GEORGIA

TODD DOWNES,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2005-17
	:	
COBB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Todd Downes (Appellant) from a decision by the Cobb County Board of Education (Local Board) to suspend him for 20 days without pay after finding that he failed to follow its policies regarding the handling of money. Shortly after the Local Board issued its decision, Appellant was relieved of his coaching duties. Appellant claims that the evidence does not support the Local Board’s decision and the loss of his coaching duties. The Local Board’s decision is reversed.

The Local Board employed Appellant as a physical education teacher at Kell High School, a new school that was opened in 2002. Appellant also was assigned the job of being the girls’ fast softball coach.

In the spring of 2003, the booster clubs decided to build a softball and baseball training facility on the grounds of Kell High School. The athletic director and Appellant assisted the booster clubs in preparing a proposal for the construction of the facility to be presented to the Local Board. The presentation contained the specifications for the facility and had an estimated cost of construction of \$76,000. Appellant, along with the athletic director and two booster club parents, obtained approval for a loan for \$76,000 from the bank where the school had its checking account. The Local Board approved the construction of the facility on October 23, 2003, at a cost of \$76,000. Shortly afterwards, the booster clubs learned that the cost of the facility would be more than \$76,000 because (1) a parent, who had agreed to provide free labor on the project, lost his job and was unable to provide the free labor, (2) the county required the installation of a fire hydrant, and (3) sprinkler system lines had to be moved.

The athletic director and Appellant told the principal that the facility was going to cost more than originally planned. The principal called an officer at the bank where the school maintained its checking account. The principal then told the athletic director and Appellant that everything was arranged to increase the loan to cover the increased costs. The facility was built in accordance with the specifications approved by the Local Board, but the final cost was \$168,000 rather than \$76,000.

In February 2004, the booster clubs held a basketball tournament at the high school to raise money to pay on the debt that had been incurred in building a stadium for the school. A game was held on a Friday night in February 2004. There was no school on the following Monday and on the next day, Tuesday, a school auditor checked the safe and did not find the gate receipts from the game played on the previous Friday night. The athletic director and Appellant were counting the money at the time. The school auditor reported the funds missing without making any inquiry about the location of the funds.

Appellant, with the approval of his principal, and the athletic director opened two checking accounts for the booster clubs to hold booster club funds and keep them out of any control by the principal. The principal had incorrectly estimated some costs of opening a new school and was switching funds from different account to meet expenses when they arose. Appellant was one of the signators on the accounts.

On June 4, 2004, the booster clubs held a soccer event at the high school. Appellant was not involved in organizing the event, but on the night before the event was to occur the athletic director asked Appellant to supervise the event. When the game ended late in the evening, Appellant received cash from the sponsors of the game that represented the booster clubs' share of the gate receipts for the game. Appellant did not have access to the school safe so he placed the money in a locked file cabinet in his office. The next morning, Appellant left to attend a graduate course program and the money remained in his file cabinet. In July 2004, the booster club treasurer asked school administrators about the funds. The following day, Appellant gave the school bookkeeper a cashiers' check for the receipts received.

Because of these actions, Appellant was charged with willful neglect of duty, insubordination, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 because of the alleged violation of several Local Board policies. The human resources director recommended Appellant's suspension for 20 days without pay and the Local Superintendent agreed with the recommendation. A tribunal of three members of the Local Board heard the evidence, decided that Appellant had willfully neglected his duties, and recommended a 10-day suspension without pay. The Local Board, however, decided to suspend Appellant for 20 days without pay. The human resources director then decided to relieve Appellant of his coaching duties for four years. Appellant then appealed to the State Board of Education.

On appeal, Appellant claims that the evidence does not support the Local Board's decision. In addition, Appellant claims that his coaching duties should be reinstated because they are an integral part of his teaching duties.

A local board of education has the burden of proof whenever it charges a teacher under the provisions of O.C.G.A. § 20-2-940.¹ However, "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the

¹ O.C.G.A. § 20-2-940(e)(4) (2001).

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 a teacher to be guilty of willful neglect of duty under O.C.G.A. § 20-2-940(a)(3) there has to be “a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Under either of these interpretations, ‘wilfulness’ requires a showing of more than mere negligence.” *Terry v. Houston Cnty. Bd. of Educ.*, 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986).

Insubordination also requires more than mere negligence. “[F]or 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 (Ga. SBE, Jan. 8, 1987). Insubordination thus requires a showing of a deliberate refusal to execute a lawful command of a superior.” *Goode v. Atlanta City Bd. of Educ.* Case No. 2005-07 (GA SBE, Jan. 13, 2005).

The Local Board claims that Appellant willfully violated its Policy DI, which provides:

“School principals are responsible for the management of all funds involving school activity. Management of school funds requires strict compliance with the accounting and procedure manual and state law.”

The Local Board claims that Appellant violated Policy DI because he failed to follow the accounting and procedure manual in accounting for the funds from the concessions and in opening two checking accounts for the booster clubs. The Local Board argues that Policy DI establishes two standards, one applicable to principals, and the other applicable to everyone. According to the Local Board, the first standard places responsibility with the principal, while the second standard is applicable to everyone dealing with school funds and requires strict compliance with the accounting and procedure manual and state law. By its terms, however, the policy vests responsibility for the management of funds in the school principal. It is in the management of school funds, which is vested in the principal, that there has to be strict compliance with the accounting and procedure manual and state law. By its terms, therefore, the policy is only applicable to principals and not to any other person who has contact with funds in a school. The policy, therefore, is not applicable to Appellant because he is not in a principal position. It also follows that the charges made against Appellant that are based on his alleged violations of the accounting and procedures manual are groundless since policy DI, and its requirement for compliance with the accounting and procedures manual, only applies to principals and not to teachers.

The Local Board's Policy FEAE, "Construction of or Improvements to Facilities on School District Property by Community Organizations or Individuals," provides:

Any improvements to existing Cobb County Board of Education property, whether new construction, modification, alteration or renovation – either interior or exterior in nature – proposed by an individual or organization other than the Cobb County School District shall not be commenced until plans, specifications and projected costs have been submitted to the school principal and to the Director of Construction for review and approval. Property includes, but is not limited to, land, administrative facilities, academic facilities, athletic facilities, grounds, and unimproved portions of school or administrative sites.

Projects estimated to cost more than ten thousand (\$10,000) shall be evaluated by the Director of Construction and recommended by the Superintendent to the Board of Education for approval and authorization. Simultaneously, documentation showing funds available for the project, proposed financing, and plans for paying off any debt incurred for the project shall be submitted.

The Local Board claims that Appellant willfully neglected his duties because he was involved in obtaining an increase in the amount of the loan for the baseball and softball training facility from \$76,000 to \$168,000 without the Local Board's approval.

Willful neglect of duty requires "a flagrant act or omission, an intentional violation of a known rule or policy." *Terry, supra*. The evidence does not show that Appellant flagrantly or intentionally violated Policy FEAE. Appellant, along with the athletic director, went to the principal and told him about the increased costs of the project. It was the principal who arranged for the increase in the amount of the loan. If a teacher presents a problem or situation to a superior and the superior fails to follow a local board policy with regard to the problem or situation, the teacher cannot be deemed to have flagrantly or intentionally violated the policy. The teacher cannot be held responsible for the incompetence, negligence, or willful disregard of duties of a superior. Since, in this instance, Appellant presented the fact that there would be an increase in the cost of the facility to his superior the State Board of Education concludes that the evidence does not show that he willfully neglected his duties when the bank increased the amount of the loan. Additionally, the facts do not show that Appellant was insubordinate in obtaining an increase in the amount of the loan.

The Local Board also argues that Appellant's involvement with the increase in the loan for the baseball and softball training facility resulted in a violation of Standard 5 of the Georgia Code of Ethics for Educators, which provides, in part, that:

An educator entrusted with public funds and property should honor that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes ...

1. misusing public or school-related funds;
2. failing to account for funds collected from students or parents;
3. submitting fraudulent requests for reimbursement of expenses or for pay;
4. co-mingling public or school-related funds with personal funds or checking accounts; and
5. misusing public or school related property ...without the approval of the local board of education.

Professional Standards Commission Rule 505-6-.01. The Local Board's assertion is made without any explanation of how Appellant's actions constitute a violation of Rule 505-6-.01. The State Board of Education concludes that the Local Board has not made any showing in this proceeding that Appellant violated Professional Standards Commission Rule 505-5-.01.

The Local Board claims that Appellant willfully violated its Policy JKAA, which provides, in part, that:

“No classroom instructional/resource personnel shall be responsible for the accounting of funds resulting from approved fund-raising activities sponsored by supportive organizations [defined as PTA, Booster Club, and other organizations].”

The Local Board claims that Appellant violated this policy because he was involved in the handling of money at both the basketball tournament and at the soccer game. The policy, however, does not clearly bar teachers from handling money or from providing an accounting for money. Arguably, the policy provides that it is the responsibility of the supportive organizations to provide for the accounting of funds and that the responsibility cannot default to a teacher. The policy can also be interpreted to mean that the maintenance of accounting records is the responsibility of a supporting organization, which does not bar a teacher from handling the money. Even if Appellant had been aware of the policy, the policy's lack of clarity precludes any finding that Appellant flagrantly or intentionally violated the policy.

The Local Board also claims that Appellant willfully neglected his duties because he violated the accounting and procedures manual by not immediately depositing the booster club funds in the school safe on two occasions. As earlier stated, the accounting and procedures manual is not applicable to teachers but is part of the responsibility of

principals through Policy DI. Appellant, therefore, cannot be held liable for not following the accounting and procedures manual.²

Appellant asks the State Board of Education to reinstate him in his coaching position. He claims that his coaching duties are an integral part of his contract as a teacher. He also claims that his coaching duties were taken from him because he exercised his right to appeal the Local Board's decision. The State Board of Education, however, has consistently held that the assignment of coaching duties, and similar supplemental duties, are matters of internal administration and do not involve the administration or interpretation of school law. *See, e.g., Bonner, et al. v. Fulton Cnty. Bd. of Educ.*, Case No. 1989-24 (Ga. SBE, Dec. 14, 1989). The State Board of Education, therefore, is without jurisdiction to consider any claim about the removal of Appellant's coaching duties.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no evidence to support the Local Board's decision to suspend Appellant for 20 days without pay because of willful neglect of duties, insubordination, or other good and sufficient cause. The Local Board's decision, therefore, is hereby REVERSED.

This _____ day of July 2005.

William Bradley Bryant
Vice Chairman for Appeals

² Additionally, Appellant was not dealing with school funds, but, instead, was handling booster club funds. The accounting and procedures manual is applicable only to school funds.