

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| <b>AARON TOOKES,</b>       | : |                         |
|                            | : |                         |
| <b>Appellant,</b>          | : |                         |
|                            | : |                         |
| <b>vs.</b>                 | : | <b>CASE NO. 2005-31</b> |
|                            | : |                         |
| <b>ATLANTA CITY</b>        | : |                         |
| <b>BOARD OF EDUCATION,</b> | : |                         |
|                            | : |                         |
| <b>Appellee.</b>           | : | <b>DECISION</b>         |

This is an appeal by Aaron Tookes (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to terminate his contract after a tribunal found him not guilty of the charge of immorality. Appellant claims that the Local Board’s decision was arbitrary and capricious and without any basis because the tribunal found that the evidence did not support the charges. The Local Board’s decision is reversed.

On August 26, 2004, the Local Superintendent charged Appellant, who was employed as a principal, with immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 and notified Appellant that she was recommending his termination. The Local Superintendent wrote that the charges arose because Appellant engaged in sexual harassment and sexual misconduct because he hugged a teacher at his school. A hearing was held before a tribunal on November 3, 2004. The tribunal found that there was insufficient evidence to support the charges of sexual harassment or sexual misconduct. The tribunal, however, found that Appellant had exercised poor judgment and recommended his suspension for 90 days.

On January 10, 2005, the Local Board decided to terminate Appellant’s contract because he had exercised poor judgment and subjected a teacher to sexual harassment. Appellant then filed an appeal to the State Board of Education.

Appellant claims that the Local Board does not have any ground for dismissing him since the tribunal found him not guilty of the charges of sexual harassment or sexual misconduct. The Local Board contends that the tribunal’s finding that Appellant exercised poor judgment is a sufficient basis for terminating Appellant’s contract.

The tribunal acts as the finder of fact, and, as the finder of fact in this case, the tribunal found that the testimony of the witnesses did not establish that

Appellant engaged in sexual harassment or sexual misconduct. Since the Local Superintendent based the charges of immorality and other good and sufficient cause on the allegation that Appellant engaged in sexual harassment and sexual misconduct, the tribunal's finding completely exonerated Appellant from any disciplinary action.

The Local Board contends that the tribunal's finding that Appellant exercised poor judgment, along with its own independent review of the record, established sufficient basis for it to terminate Appellant for other good and sufficient cause as charged by the Local Superintendent. The Local Board's contention, however, cannot stand because (1) Appellant was not charged with exercising poor judgment; (2) poor judgment is not one of the reasons for termination under the provisions of O.C.G.A. § 20-2-940, and (3) the Local Board cannot establish any facts based upon an independent review of the record since it turned the fact finding function over to a tribunal and was not present to be able to judge the credibility of the witnesses.

A teacher who has taught for more than four years has a property interest in continued employment that cannot be denied to the teacher without due process. Due process requires a school system to provide a teacher with a hearing and notice of any charges. O.C.G.A. §20-2-940. In the instant case, the Local Superintendent did not charge Appellant with exercising poor judgment, but, instead, only charged him with sexual harassment and sexual misconduct, which the tribunal found did not occur. The Local Board's action based upon Appellant's poor judgment, therefore, is a denial of due process and cannot stand.

O.C.G.A. § 20-2-940 provides for eight reasons for terminating the contract of an employee under contract.<sup>1</sup> Poor judgment is not one of the reasons permitted for terminating a contract. It cannot, therefore, be used as an independent basis for terminating a teacher's contract.

Contrary to the Local Board's assertion, it cannot determine any facts based upon an independent review of the record since it relinquished the fact-finding mission to the tribunal.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board denied Appellant due process by terminating his contract based on reasons that were not provided to him before the hearing. Additionally,

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<sup>1</sup> The eight permitted reasons are (1) incompetency; (2) insubordination, (3) willful neglect of duties, (4) immorality, (5) inciting, encouraging, or counseling student to violate any valid law, or policy or rule of the local board of education, (6) to reduce staff due to loss of students or cancellation of programs, (7) failure to secure and maintain necessary educational training, and (8) any other good and sufficient cause.

the Local Board exceeded its authority by engaging in fact finding after turning that function over to a tribunal and in terminating Appellant after he had been cleared of all charges by the tribunal. The Local Board's decision, therefore, is REVERSED.

This \_\_\_\_\_ day of May 2005.

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William Bradley Bryant  
Vice Chairman for Appeals