STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARGARET MUDRAK,	:	
	:	
Appellant,	:	**CASE NO. 2011-16**
	:	
vs.	:	
	:	
COLUMBIA COUNTY	:	
BOARD OF EDUCATION,	:	**DECISION**
	:	
Appellee.	:	

This is an appeal by Margaret Mudrak (Appellant) from a decision by the Columbia County Board of Education (Local Board) to terminate her teaching contract because of insubordination, incompetency, and willful neglect of duty under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence to support the charges and the Local Board improperly destroyed evidence. The Local Board's decision is SUSTAINED.

Appellant served as a high school special education teacher for the Local Board. On April 30, 2010, Appellant monitored a mathematics test taken by five special education students. When the regular education mathematics teacher, who co-taught with Appellant, graded the tests, she was concerned that all of the special education students used the word "skinny" to describe exponential graphs and all of them had the same answers in four word-completion questions describing graphs. Additionally, all of the students used the same x-axis starting values to solve the graphing problems that were on the test. As a group, the special education students scored higher than the regular education students from another class. On May 5, 2010, the regular education teacher presented her concerns to an assistant principal. The assistant principal reviewed the test and interviewed the students to determine if they had received any impermissible assistance from Appellant. The assistant principal then took her findings to the principal. The principal consulted with the special education director and a decision was made to refer the matter to the superintendent with a recommendation that Appellant's contract should be terminated. The Local Superintendent charged Appellant with incompetency, insubordination, and willful neglect of duty under the provisions of O.C.G.A. § 20-2-940.

A hearing on the charges was conducted before the Local Board. One of the special education students testified that Appellant provided him with assistance during the test on April 30, 2010. Evidence was presented that the Local Superintendent had signed Appellant's contract for the 2010-2011 school year on May 5, 2010, the same day the regular education teacher took her concerns to the assistant principal. At the conclusion of the hearing, the Local Board voted to terminate Appellant's contract. This appeal followed.

Under the holding in *Moulder v. Bartow Cnty. Bd. of Educ.*, 267 Ga. App. 339, 599 S.E.2d 495 (2004), a local board of education cannot consider any evidence of an incident that occurred before a new contract was signed. On appeal, Appellant claims that the Local Board erred in dismissing her because the incident occurred during the 2009-2010 school year, but she had been issued a new contract for the 2010-2011 school year. As pointed out by the Local Board, however, the conduct must be known to the administration before the contract is signed for *Moulder* to be applicable. *See, e.g., Scott v. Liberty Cnty. Bd. of Educ.*, Case No. 2007-23 (Ga. SBE, Mar. 8, 2007). In the instant case, the record shows that the administration was unaware that anything had occurred until the same day the Local Superintendent signed Appellant's contract for the new year. The regular education teacher took her concerns to the assistant principal on May 5, 2010, the day the contract was signed by the Local Superintendent. It then took another one or two days before the principal determined that Appellant gave improper assistance to the special education students. Even if the assistant principal's knowledge is deemed to be sufficient to say that the new contract was signed with knowledge of Appellant's actions, there is no evidence that the assistant principal learned that there was a problem before the Local Superintendent signed the contract. The State Board of Education, therefore, concludes that the Local Board did not err in considering the incident that occurred before the 2010-2011 contract was signed by the Local Superintendent.

Appellant also claims that there was no credible evidence to support the Local Board's decision. The only direct evidence that Appellant gave any help to the special education students came from the testimony of one student, who claimed Appellant would not let him make a mistake although he only scored 75 out of a possible 110 points. One of the other five students who took the test at the same time testified that Appellant did not assist any of the students. "The standard for review by the State Board of Education is that if there is any 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, 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). Although the testimony of the student who claimed Appellant provided assistance may be incredible and contrary to the testimony of another student, the Local Board had the responsibility of determining what testimony to believe. The State Board of Education, therefore, concludes that there was some evidence to support the Local Board's decision.

On appeal, Appellant submitted statements that the student who testified against Appellant bragged on the Internet that he had lied and gotten Appellant fired. The State Board of Education, however, cannot consider such evidence since its review must be confined to the record established during the hearing. O.C.G.A. § 20-2-1160(e).

The Local Board presented evidence that three regular education students from another class, which was not taught by Appellant, did not use the word "skinny", had different answers for the word completion questions, and used different x-axis starting points. The regular education teacher destroyed all of the regular education students' tests, including those in the class that Appellant taught. Appellant claims that the destruction of the regular education students' tests was purposeful and prevented her from showing that there was no correlation

between the tests of the special education students she taught and students from another class with whom she had no association. Although the entire investigation arose because of the differences between the tests of the three regular education students and the tests of the special education students, the showing of a lack of correlation does not negate the evidence presented by the testimony of the student who said Appellant provided assistance to the special education students. We can only speculate whether the Local Board would have made a different decision if Appellant could have shown a lack of any correlation. Since it appears from the record that the destruction of the tests was done in the ordinary course of business and was, therefore, inadvertent, we conclude that the destruction does not afford any basis for overturning the Local Board's decision.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was some evidence to support the Local Board's decision. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of January 2011.

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MARY SUE MURRAY
Vice Chair for Appeals