STATE BOARD OF EDUCATION
STATE OF GEORGIA

TOMMY ADCOCK,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO. 2011-59**
	:	
DODGE COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by Tommy Adcock from a decision by the Dodge County Board of Education ("Local Board") terminating his employment contract. The Local Board terminated Appellant, finding that he engaged in inappropriate and unprofessional relationships in his contact with female students. Thus, the Local Board found that willful neglect of duty, immorality, and other good and sufficient cause existed to support his termination under O.C.G.A. § 20-2-940(a).

On appeal, Appellant asserts four (4) errors. Appellant asserts that (1) the Local Board's decision is not supported by the evidence, (2) the Local Board's decision violates his First Amendment rights, (3) the Local Board erred by considering the testimony of the new Superintendent, and (4) the Local Board erred because the tribunal was not impartial. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

Appellant was employed as a teacher and softball coach for Dodge County High School ("Dodge"). On or about February 15, 2011, Appellant was timely notified that his 2010-2011 employment contract was being proposed for termination. Appellant appealed his proposed termination from employment. On March 10, 2011, the Local Board provided Appellant a hearing at which Appellant was given the opportunity to present evidence. At the conclusion of the hearing, the Local Board terminated Appellant's employment contract, finding that the evidence supported his termination. Appellant has appealed the decision of the Local Board to the State Board of Education ("State Board").

II. FACTUAL BACKGROUND

Appellant was employed as a teacher and softball coach for Dodge County High School ("Dodge") for the 2010-2011 school year. In December 2010, school administrators received a complaint from the parent of a female student and softball player regarding a private Facebook message which Appellant sent to the student. Specifically, Appellant sent a private Facebook message on Sunday, December 19, 2010, at 2:22 a.m., stating "Girl u were OFF the chain at the ring ceremony! Absolutely stunning! Shhhhh! Talk soon."

At the hearing, Appellant admitted to sending the message to the student. The female student further testified that at the ring ceremony referenced in the Facebook message that Appellant had made eye contact with her and mouthed the word "Wow" to her in reference to her physical appearance. Appellant's actions made the student uncomfortable around him.

After receiving the complaint regarding the Facebook message, the Local Board began investigating Appellant's behavior towards other female students and softball players who had regular contact with Appellant. In doing so, the Local Board discovered several other inappropriate and unprofessional communications by Appellant towards other female students.

At the hearing, a second student testified that she had received a similar private Facebook message in the fall of 2010. This second student testified that she received the private Facebook message after Appellant saw her dressed up when her picture was taken for making the honor roll. That private Facebook message to the second student referred to her as being "stunning," used the expression "Shhhhh," and asked her to delete the message. Several weeks later, at practice for the ring ceremony, Appellant smiled and winked at this second student. Appellant's actions made the second student also feel uncomfortable.

At the hearing, a third student testified that she had received a series of text messages from Appellant on her cell phone one night during softball season. The third student testified that Appellant continued texting after she attempted to end the dialogue. Appellant ended the series of texts with a "Shhhhh" and requested the third student to delete the messages from him. The third student described Appellant as "flirty."

At the hearing, a fourth student testified that around midnight on October 15, 2010, she received a Facebook message asking if "it was somebody's birthday in a few minutes." When she replied it was, Appellant sent another message stating, "Well, happy birthday girlfriend."

At the hearing, a fifth female student testified that Appellant asked her to "tag" him in a photo of her and another female student, which would make the picture appear on his Facebook profile, even though, he was not in the picture. The student complied, but thought the request was odd since he didn't appear in the picture. This student also testified that she would not play softball if Appellant was the coach.

At the hearing, a sixth female student testified that at the ring ceremony Appellant told her she was "stunning," and that Appellant commented non-stop on Facebook on matters unrelated to softball. The sixth student further testified that she was not comfortable playing softball for Appellant.

III. ERRORS ASSERTED ON APPEAL

A. Record Evidence.

Appellant asserts that the evidence in the record does not support the Local Board's decision. The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is 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. 1976). For the reasons set forth below, the State Board finds that the record does contain legally sufficient evidence to support the decision of the Local Board.

A "willful neglect of duty" requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. . . .'[W]illfulness' requires a showing of more than mere negligence." Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986). Moreover, willful neglect of duties exists if Appellant knew, or should have known, what his obligations were pursuant to the Local Board's policy. See Clemmons v. Chattooga County Bd.

of Educ., Case No. 1998-27 (Ga. SBE, Sep. 1998); see also Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008); Mahone v. Clayton County Bd. of Educ., Case No. 2010-77 (Ga. SBE, July 2010). Furthermore, this Board has held that "it is axiomatic that 'good and sufficient cause' must be construed consistently with the other grounds for discipline contained in the Fair Dismissal Act." See Beale-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008).

In this case, Appellant was charged with making inappropriate comments and sending inappropriate text and Facebook messages to female students. Standard 2 of the Code of Ethics provides, "An educator shall always maintain a professional relationship with all students, both in and outside the classroom. Unethical conduct includes but is not limited to: . . . soliciting, encouraging, or consummating an inappropriate written, verbal, electronic, or physical relationship with a student." Ga. Comp. R. & Regs. R. 505-6-.02(3)(b) (emphasis added). "Unethical conduct includes but is not limited to any conduct that impairs and/or diminishes the certificate holder's ability to function professionally in his or her employment position, or behavior or conduct that is detrimental to the health, welfare, discipline, or morals of students." Ga. Comp. R. & Regs. R. 505-6-.2(3)(j). Thus, contrary to Appellant's assertion, this provision is not limited to solicitation.

In this case, Appellant sent Facebook and text messages to several female students containing inappropriate comments regarding their appearances. Specifically, it is clearly inappropriate for a teacher to send private messages to a female student in the middle of night telling the student she looked "stunning." Appellant told another female student she looked "stunning." Appellant contends that he was simply complimenting the students. However, the tribunal as the finder of fact for the Local Board concluded that these messages crossed the line of proper interaction with female students. Moreover, Appellant's request to several students to keep the communications private supports the Local Board's conclusion that Appellant crossed the line. This conclusion is further supported by the content of the messages which were unrelated to school activities and were often made late at night. Thus, the Local Board's decision is supported by the record evidence.

Furthermore, Appellant's assertion that his conduct was not willful or intentional is without merit. Appellant made intentional and conscious decisions to send the inappropriate messages and text to female students. Appellant is responsible for complying with the Code of Conduct. Appellant knew or should have known that his conduct violated the Code of Ethics. Thus, Appellant's contention that the Local Board did not have a specific policy regarding social networking and texting is irrelevant.

Finally, the record clearly shows that several students were no longer comfortable around Appellant and would not play softball if he returned. Thus, the record contains sufficient evidence that Appellant's ability to function professionally has been impaired or diminished, and his behavior or conduct has been detrimental to the welfare of the students. For these reasons, the Local Board's decision is supported by the evidence.

B. First Amendment.

Appellant contends that the Local Board's decision violates his First Amendment rights[1] under the United States Constitution. This assertion is without merit. In order to establish a claim that his free

[1] Appellant cites Tinker v. Des Moines Independent Community School District, et al., 393 U.S. 503; 89 S. Ct. 733; 21 L. Ed. 2d 731 (1969) in support of his case. However, Tinker addressed the right of students to wear armbands at school to protest hostilities in Vietnam. The Supreme

speech rights have been violated, Appellant must show that the speech in question: (1) was constitutionally protected; and (2) was a "substantial or motivating factor" in the employer's adverse employment action. Ferrara v. Mills, 781 F.2d 1508, 1512 (11th Cir. 1986); see also Mount Healthy City School Dist. Bd. of Educ. v. Doyle, 429 U.S. 274, 287, 97 S. Ct. 568, 50 L. Ed. 2d 471 (1977).

If Appellant is successful in making this initial showing, then "the inquiry focuses upon whether the adverse employment decision was justified." Id. Finally, if the first two steps are determined in Appellant's favor, then the Appellant's interest must be weighed against the interest of the state or government. Id.; see also Pickering v. Bd. of Educ., 391 U.S. 563, 568, 88 S. Ct. 1731, 20 L. Ed 29 811 (1968); Rankin v. McPherson, 483 U.S. 378, 384-88, 107 S. Ct. 2891, 97 L. Ed. 2d 315 (1987).

The question of whether a public employee's speech is constitutionally protected depends on whether the speech relates to matters of public concern or to matters of merely a personal interest to the employee. Connick v. Myers, 461 U.S. 138, 146-47, 103 S. Ct. 1684, 75 L. Ed. 2d 708 (1983). "If the employee's speech cannot fairly be characterized as constituting speech on a matter of public concern, the inquiry is at an end." Ferrara, 781 F.2d at 1512. "Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." Connick, 461 U.S. at 147-48.

In this case, the content, form and context of Appellant's speech clearly was not on a matter of public concern. Rather, Appellant's comments to the female students were purely personal in nature. Furthermore, based upon the nature of the comments, the Local Board's interest in the welfare of its students outweighs any interest Appellant has in making inappropriate comments to female students. Thus, this assertion is without merit.

C. Testimony of the Superintendent.

Appellant asserts that the Local Board erred by allowing the testimony of the Interim Superintendent recommending the termination of Appellant. Appellant contends that the Interim Superintendent did not make the recommendation and that her testimony was not relevant and was prejudicial. The tribunal was convened because of the recommendation of the former Superintendent. The testimony of the new Interim Superintendent was consistent with the charge letter which was the reason the tribunal was convened. Moreover, the tribunal made its recommendation based upon the factual evidence presented by the Local Board at the hearing. Finally, Appellant has failed to identify any basis supporting his assertion that this evidence was prejudicial. Thus, this assertion is without merit.

D. Impartiality of the Board.

Appellant asserts that he should have been entitled to a full hearing on the impartiality of the three members on the tribunal. Appellant's contention is based upon the disclosure during the hearing that each of the three members in their prior roles as administrators for other local school systems had been represented by Harbin, Hartley & Hawkins, LLP, the same law firm representing the Local Board in this appeal.

O.C.G.A. § 20-2-940(e)(1) requires for the tribunal members to be impartial. However, due process rights are not violated without a showing of actual bias. Holley v. Seminole Cnty. Sch. Dist., 755

Court found that this activity was protected under the First Amendment. Thus, Tinker is not applicable to this case as Appellant did not engage in protected First Amendment activity.

F.2d 1492, 1497 (11th Cir. 1985). At the hearing, the Hearing Officer allowed a limited voir dire. The tribunal members confirmed their ability to be impartial. Appellant failed to identify any basis showing that the tribunal members were not impartial. Appellant failed to establish that any members' prior relationship with Harbin, Hartley & Hawkins, LLP would cause them to be impartial in deciding this case. Therefore, the Local Board did not err by failing to recuse the tribunal or by failing to provide a full hearing to voir dire the tribunal members.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is, therefore, **SUSTAINED**.

This 21st day of July 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS