

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| EZE OGBUAGU, | : | |
| | : | |
| Appellant, | : | |
| | : | |
| v. | : | CASE NO. 2011-72 |
| | : | |
| DEKALB COUNTY BOARD OF | : | DECISION |
| EDUCATION, | : | |
| | : | |
| Appellee. | : | |

This is an appeal by Eze Ogbuagu from a decision by the DeKalb County Board of Education (“Local Board”) non-renewing his employment contract for the 2010-2011 school year. The Local Board charged Appellant with incompetency, insubordination, willful neglect of duties, and other good and sufficient cause pursuant to O.C.G.A. § 20-2-940. After a hearing, the Local Board non-renewed Appellant’s employment contract. On appeal, Appellant contends that the Local Board’s decision is based upon hearsay and therefore is in error. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

On or about April 21, 2010, Appellant was notified that his annual contract for the 2010-2011 school-year was being recommended for non-renewal. Appellant appealed the non-renewal recommendation of his employment contract. A tribunal for the School Board was convened at which Appellant was provided the opportunity to present evidence and to subpoena witnesses. At the conclusion of the hearing, the tribunal unanimously voted to uphold the non-renewal of Appellant’s employment contract. The Local Board affirmed the decision of the hearing tribunal. 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 Special Education teacher at Columbia Middle School for approximately nine (9) years. The Local Board proposed non-renewing Appellant’s contract on numerous grounds, including, but not limited to, that he failed to follow directions, demonstrated an inability to manage his classroom, failed to engage his students, and failing to properly submit IEPs.

At the hearing, the Local Board tendered evidence establishing that Appellant received several observations in which Appellant received “NI” scores during the school-year. The basis for these observations related to deficiencies in Appellant’s redirection of students, class management, and class instruction. At the hearing, the Local Board tendered evidence showing that Appellant failed to perform his assigned duties by failing to properly submit IEPs for students, and lesson plans.

As a result, on November 2, 2009, Appellant was placed on a Professional Development Plan (“PDP”). The PDP pertained to Appellant’s failure to accurately and completely maintain files and records. Appellant failed to meet the PDP requirements, resulting in an “unsatisfactory” rating on Appellant’s annual evaluation. Because of these performance deficiencies, the Local Board non-renewed Appellant’s contract.

III. ERRORS ASSERTED ON APPEAL

On appeal, Appellant does not challenge that the record contains sufficient evidence to support the decision of the Local Board. Appellant acknowledges that this 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). Rather, Appellant contends that the Local Board relied on inadmissible hearsay to which he did not object to before the Local Board. Appellant further contends that, under Georgia law, the decision of the Local Board cannot be affirmed based upon inadmissible hearsay even though he did not object to the hearsay. For the reasons set forth below, the State Board finds Appellant’s contention without merit. The State Board further finds that the record contains legally sufficient evidence to support the decision of the Local Board.

Appellant relies upon Woodruff v. Woodruff, 272 Ga. 485 (2000) to support his position that hearsay evidence¹, even if not objected to, cannot be relied upon to affirm the decision of the Local Board. This Board finds that Woodruff is not applicable to this case. This Board’s authority is found in O.C.G.A. § 20-2-1160. Pursuant to O.C.G.A. § 20-2-1160(e), “[n]either the state board nor the superior court shall consider any question in matters before the local board nor consider the matter de novo” In Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983), the Georgia Supreme Court, citing O.C.G.A. § 20-2-1160 (e), held that “[a]s an appellate body, . . . the State Board of Education . . . was not authorized to consider matters which had not

¹ Appellant makes a blanket assertion that 95% of the evidence relied upon by the Local Board was hearsay. However, Appellant has failed to identify with specificity the evidence he contends is hearsay. Moreover, even accepting Appellant’s blanket assertion, Appellant has conceded that 5% of the evidence was properly admissible. Thus, this 5% of evidence is sufficient for this Board to affirm the decision of the Local Board under the “any evidence” rule.

been raised before the local board." Thus, an objection not raised before the Local Board cannot be raised on appeal to the State Board. Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007). Therefore, Appellant's assertion is without merit.

In this case, the record shows that Appellant failed to follow directions, demonstrated an inability to manage his classroom, failed to engage his students, and failing to properly submit IEPs. The record further shows that Appellant received several observations in which Appellant received "NI" scores during the school-year. The basis for these observations related to deficiencies in Appellant's redirection of students, class management, and class instruction. The record also shows that Appellant failed to perform his assigned duties by failing to properly submit IEPs for students, and lesson plans. As a result, Appellant was placed on a PDP. Appellant failed to meet the PDP requirements, resulting in an "unsatisfactory" rating on Appellant's annual evaluation. This evidence is sufficient to support the decision of the Local Board.

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 8th day of September 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS