

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DR. CLARENCE JONES,

Appellant,

vs.

**ATLANTA PUBLIC SCHOOLS
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1995-25

DECISION

**PART I
SUMMARY**

This is an appeal by Dr. Clarence Jones (Appellant) from a decision by the Atlanta Public Schools Board of Education (Local Board) to terminate his contract as Vocational Educational Supervisor at Archer High School based on a finding that he violated the Local Board's policy that prohibits sexual harassment of students. Appellant claims he was denied due process because:

1) the Local Board denied his request for a continuance and his motion to compel the production of documents under the Open Records Act; 2) the Local Board refused to hear his motion in limine; 3) the Tribunal composed of members from the Local Board was biased against him and the Local Board's regular attorney, who acted as hearing officer, exerted undue influence upon the Tribunal, and 4) the Local Board erroneously considered evidence of incidents that took place before the current contract year. In addition, Appellant claims that the Local Board erred as a matter of law in refusing to permit him to examine the diary of a student witness when photocopies of selected pages from the diary were allowed into evidence, and the results of an investigation were improperly admitted because the investigation was biased, incomplete, and unfairly prejudicial. Appellant also claims that the evidence was insufficient to carry the burden of proof to sustain the charges. The Local Board's decision is sustained.

**PART II
FACTUAL BACKGROUND**

On November 2, 1994, Appellant reprimanded a female student in the lunchroom at Archer High School because she cut in line. The student cursed him and made obscene gestures at him. As a result, Appellant had the student suspended from her extra-curricular marching band activities. Two days later, the female student made her charges of sexual harassment against Appellant.

The student alleged that Appellant had been making sexually suggestive comments to her in the lunchroom since the latter part of the 1993-1994 school year, and that the comments had become more frequent and explicit during the 1994-1995 school year. The charges were brought

to the attention of the assistant principal, who asked the student to prepare a written statement. The student went home and prepared the statement with the aid of a daily diary she kept.

The matter was referred to the Local Superintendent, who appointed an investigator to look into the situation. The investigator found other students who claimed they had been similarly sexually harassed by Appellant. In addition, the investigator found a teacher in another school who claimed she had been sexually harassed by Appellant when she was assigned to Archer High School. Appellant refused to cooperate with the investigator and asked that she be replaced because he and the investigator had previously met and Appellant did not think she could be unbiased. The Local Superintendent removed the investigator and contracted with a private attorney to conduct the investigation. The second investigator interviewed Appellant, the students, and several character witnesses identified by Appellant. At the end of her investigation, the second investigator concluded that Appellant had violated the Local Board's sexual harassment policy and recommended that the Local Superintendent terminate Appellant's contract.

On February 13, 1995, the Local Superintendent informed Appellant that he would seek termination of Appellant's contract. Appellant was informed that a hearing would be held on March 2, 1995, to hear the evidence. Additionally, Appellant was given a list of the witnesses who would testify and a summary of their expected testimony. The hearing was postponed until March 23, 1995, when a tribunal composed of members from the Local Board heard the evidence. The hearing concluded with the Local Board meeting on March 29, 1995, to make its decision. The Local Board decided to adopt the Local Superintendent's recommendation to terminate Appellant's employment contract. Appellant then appealed to the State Board of Education.

PART III DISCUSSION

Appellant claims that the testimony against him was fabricated in response to his disciplining the female student in the lunchroom. He claims that the students who testified against him were in the marching band, or related to members of the marching band, and were biased against him because he had previously discovered, reported, and stopped several improper activities engaged in by the marching band.

"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, Ransom 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. 8, 1976)." Roderick J. V. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The Local Board serves as the finder of fact and must determine the veracity of witnesses. Appellant was given the opportunity to advance his conspiracy theories before the Local Board and to cross-examine all of the witnesses. There was testimony that Appellant made sexually related comments to female students. As corroboration, the Local Board also introduced the testimony of a teacher who has previously been assigned to Archer High School. The State Board of Education cannot go behind the Local Board's determination. Thus the State Board of Education concludes that the Local Board could find that a conspiracy did not exist and that Appellant sexually harassed the students in violation of its policy.

Appellant claims he was denied an opportunity to present a viable defense because the Local Board Tribunal refused to grant him a continuance to pursue his claims that the Local Superintendent did not provide him with all of the documents he requested under the Open Records Act. At the beginning of the hearing, Appellant requested the continuance. The Local Board's regular attorney, who was serving as the hearing officer, argued that all of the documents had been provided to Appellant, and that Appellant's proper course of action should

have been to subpoena the documents rather than request them through the Open Records Act.

The Tribunal ordered the hearing to go forward. As a result, Appellant claims he was not permitted to present evidence that would have influenced how the Tribunal viewed the testimony of the Local Superintendent's witnesses. Two days after the hearing started, the School System produced additional documents that Appellant had requested, despite the School System's assurances that all of the documents had been produced before the hearing began. Appellant also claims that the School System failed to produce some documents he is aware exist because he was the one who prepared the documents. Specifically, these documents consisted of his allegations against some faculty members. He claims that the documents would have shown the Tribunal that the faculty members had reason to speak out against him.

O.C.G.A. § 50-18-70, *et seq.*, the Open Records Act, requires public agencies to disclose certain records when requested. Within three business days after the request is made, the public agency has to determine whether the records are available. If the requested documents are not provided, the requesting party can seek their disclosure in superior court. O.C.G.A. § 50-18-73.

In this case, an Open Records Request was made on March 13, 1995, and a second request was made on March 17, 1995. Appellant, therefore, had ample time before the hearing began to file an action in superior court to obtain enforcement of his Open Records request. The records he sought were primarily the personnel records of other employees who were not the subject of the hearing. Appellant had an opportunity to examine these employees and present his theories to the Local Board Tribunal. We conclude that Appellant was not denied due process and waived any right to a continuance by waiting until the hearing started before raising the issue when he could have gone to superior court to raise the issue in the days before the hearing.

Appellant claims that the Local Board denied him due process because he was not permitted to fully explain his motion in limine, in which he sought to exclude the testimony of the female student who brought the initial charges, because he had not had an opportunity to examine the entire contents of her personal diary, the testimony of the second investigator because he had not had an opportunity to examine the documents prepared during the course of the investigation, and the testimony of the first investigator because the documents she prepared during the course of her investigation were not produced until just before the hearing. The hearing officer ruled that Appellant did not have any right to review the entire contents of the student's daily diary, and that Appellant needed to raise his further objections during the course of the proceedings if any evidence was presented that he thought was improper. On appeal, Appellant only argues that he was forced to proceed without an adequate opportunity to review the documents; he does not point to any specific evidence that was prejudicial to his case. We, therefore, conclude that Appellant's ability to fully explain his motion in limine did not constitute a denial of due process.

Appellant next contends that the composition of the Local Board Tribunal denied him due process because the panel members were biased. Appellant did not raise any objection to the Tribunal during the hearing. He, therefore, cannot raise this issue for the first time on appeal. Appellant also objected to the Local Board's regular counsel acting as hearing officer. When this issue was raised at the hearing, the Local Board's attorney stepped aside and no longer served as hearing officer. We, therefore, conclude that Appellant's claims of bias and prejudice on the part of the Local Board Tribunal members and the hearing officer are without foundation.

Appellant also claims that the Local Board erroneously considered evidence of incidents that took place in prior years. Specifically, Appellant claims that it was improper for the Local Board to consider the testimony of the teacher who claimed she had been sexually harassed by Appellant when she had been assigned to Archer High School. While evidence of misconduct that is known to a local board before contract renewal cannot be used as the basis for charges in a subsequent year, such actions are admissible to establish a pattern of conduct or behavior. In this

case, the testimony of the teacher was similar to the testimony provided by the students. We, therefore, conclude that the Local Board Tribunal did not err in considering the testimony concerning events of a similar nature that occurred in prior years.

Appellant claims that the Local Board erred as a matter of law in refusing to permit him to examine the entire contents of the personal diary of the student who brought the initial charges. Appellant claims that if he had been able to examine all of the pages of the diary, he may have found exculpatory information, or information about why the student brought the charges. Appellant does not cite any authority for his position that he had a right to examine the entire diary, even though it was not introduced into evidence, and thus avoid the privacy rights of the student that were raised on her behalf at the hearing.

It is clear from the record that the female student brought the charges because Appellant reprimanded her in the lunchroom and barred her from extracurricular activities for her actions. The Local Board Tribunal was also presented with the testimony of the second investigator that she thought the pages of the diary may have been contrived. The reasons why the student brought the charges, however, only go to her credibility and do not go to whether the charges were true. There was sufficient corroborating evidence to sustain the charges even if the Local Board discounted the testimony of the student. The State Board of Education concludes that the Local Board did not err in permitting the student to testify even though her entire diary was not made available to Appellant.

Appellant claims that the preliminary investigations were prejudicial to his case because the first investigator was familiar with him and did not interview all the witnesses, while the second investigator merely reviewed the first investigator's notes and did not interview all of the witnesses identified by Appellant. Appellant also complains because the second investigator did not retain the notes she used to prepare her final report to the Local Superintendent. None of Appellant's objections, however, have any merit. The Local Board provided Appellant with a hearing and it was as a result of the evidence produced at the hearing that he was terminated rather than as the result of the preliminary investigations.

The Local Board's policy against sexual harassment explicitly spells out that offensive sexual comments should not be made and that termination is automatic if a teacher or administrator is found guilty of the charges. Appellant was aware of the policy and had been specifically counseled to avoid making sexual comments. There is no evidence in the record that there was a conspiracy between the administration and the students to deprive Appellant of his position.

PART IV DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board afforded Appellant all of his due process rights and there was evidence to support the Local Board's decision. The Local Board's decision, therefore, is **SUSTAINED**.

This 10th day of August, 1995.

Messrs. Sessoms, Teasley and Williams were not present. The seat for the Tenth District is vacant.

Robert M. Brinson
Vice Chairman for Appeals