

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

CINDY WILLIAMS,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2017-36
	:	
GRADY COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Cindy Williams (“Appellant”) from the decision of the Grady County Board of Education (“Local Board”), terminating her 2016-2017 employment contract because of Appellant’s unauthorized modification of the grade of her daughter, a student at Cairo High School. Specifically, the Local Board determined that Appellant violated the code of ethics for employees of the Grady County School System and that she willfully violated her duty to perform her duties professionally and consistently with the instruction of supervisors. For the following reasons, the decision of the Local Board is hereby **REVERSED**.

I. FACTUAL BACKGROUND

L.W., the daughter of Appellant, became a new student at Cairo High School beginning the fall of 2015. She was in the 10th grade. L.W. was interested in studying French in school. Because Cairo High School did not offer the course, L.W.’s guidance counselor, Ms. York, scheduled L.W. to take the course online. L.W. was expected to complete French I during the fall semester and French II during the spring semester, although the online program was set up in such a manner that both the French I and French II courses began in the fall semester and extended through the spring 2016 semester. L.W. began the French I coursework in the fall of 2015. L.W. was not supposed to take French I and French II at the same time. L.W. had not completed French I by the end of the Fall 2015 semester; however, Mr. Best, the assistant principal and virtual school director, recorded a grade of 93 for L.W.’s French I course work at the end of the Fall semester since L.W. had completed the majority of the French I assignments. It was Mr. Best’s expectation that L.W. would complete French I in the fall and complete French II in the spring.

In April of 2016, Appellant and her husband attended an awards ceremony at Cairo High School where they expected to see L.W. be recognized as a member of the National Honor Society. L.W., however, did not receive the recognition. At that time, Mr. Best informed Appellant and her husband that L.W. had not completed French I and that she needed to finish French I and move on to French II. At the end of the spring semester, Mr. Best recorded a grade of 1 for the French II course because L.W.’s work was not complete. According to Mr. Best, the computer system

would not allow him to enter a zero as a grade, so he entered a 1 instead. Mr. Best told Appellant that L.W. could complete French II over the summer. L.W. completed French I during the spring of 2016. She began the French II course in the fall of 2016.

Thereafter, Appellant and Melinda Dean were hired to serve as guidance counselors at Cairo High School for the 2016-2017 school year.¹ Appellant was assigned the 11th grade class and a portion of the 9th grade class. L.W. was then an eleventh-grader at Cairo High School, and Appellant was her counselor. Believing that the French II course should not have been included on L.W.'s transcript for the spring 2016 semester, Appellant removed the French II class from L.W.'s transcript. Thereafter, Appellant notified Mr. Best, Mr. Lokey, and the school registrar, Ms. Ausburn, that she had removed the class from L.W.'s transcript.

Guidance counselors are authorized to correct errors on a student's transcript. Neither Ms. Dean nor Appellant received instructions on the procedure for making changes to a student's grades or courses. On one prior occasion, Appellant asked Ms. York about making a correction to another student's transcript. Ms. York told Appellant how to make the correction. Appellant did not consult with Ms. York prior to making a change to L.W.'s transcript because she assumed that she had a duty to correct all students' transcripts.

II. PROCEDURAL HISTORY

The school superintendent recommended that Appellant's employment contract for the 2016-2017 school year be terminated for violating the code of ethics for employees of the Grady County School System and willfully violating her duty to perform her duties professionally and consistently with the instruction of supervisors. Appellant was given a hearing before the Local Board that was presided over by a hearing officer. The Local Board accepted the recommendation of the superintendent and terminated Appellant's contract. Appellant has appealed the decision of the Local Board to the State Board of Education ("State Board").

III. ENUMERATIONS OF ERROR

Appellant set forth the following enumerations of error on appeal:

1. The decision to terminate Appellant's contract was arbitrary, capricious, and violated due process based on the procedural deficiencies of the charge letter.
2. The Local Board denied Appellant due process by failing to consider proper issues and admit key evidence.
3. The decision was arbitrary and capricious and contrary to the weight of the evidence.

¹ Appellant was specifically hired by Mr. Lokey, the school principal, to correct the problems that were occurring in the guidance counseling department, including problems with the late scheduling of student's classes and complaints by the parents.

IV. DECISION

In reviewing this appeal, this Board must apply the “any evidence rule.” Thus, if there is any evidence to support the Local Board’s decision, this Board must affirm it. *See Ransum v. Chattooga Cnty Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). *See also, Chattooga Cnty Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010). This Board will not substitute its judgment for that of the Local Board unless there is clear evidence that the Local Board’s actions were arbitrary and capricious. *Henry Cnty Bd. of Educ. v. S.G.*, 337 Ga. App. 260, 786 S.E.2d 907 (2016), cert. applied for; *King v. Worth Cnty Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013).

The Charge Letter

Appellant contends that the charge letter is deficient and thus deprived Appellant of her due process rights. Specifically, Appellant contends that the superintendent did not notify her of the grounds for the termination of her contract. Appellant also contends that there was confusion as to the summary of the evidence, what the witnesses would say, and what was the cause of the charges such that Appellant would not be able to show error.

In that regard, the charge letter provides in pertinent part:

I am advising you that Kermit Gilliard, Superintendent of Grady County Schools, is requesting that your 2016-2017 employment contract be terminated. A hearing will be held regarding this issue on October 10, 2016 at 4:00 P.M. at the VanLandingham Center at 203 North Broad Street, Cairo, Georgia. I believe that you are aware of the grounds for this request as it has been discussed with you. The superintendent is requesting that your contract be terminated for your unauthorized action in modifying the grade of your daughter who is a student at Cairo High School. This act violated the Code of Ethics relating to the employees of the Grady County School System. Further, your action willfully violates your duty to perform your duties professionally and was not consistent with the instructions of your supervisor.

The following is a list of prospective witnesses that may be called to present evidence in the matter: Kermit Gilliard, Chris Lokey, Michael Best, Julie York, Susan Poole, Bobbi Ausburn, Dan Broome, and Andrew Jones. The witnesses will testify regarding the background relating to the French I case taken by [L.W.]² for which belated credit was given and the French II course in which [L.W.] enrolled but did not complete, resulting in the issuance of a failing grade. The

² In order to protect the identity of the student, the student’s name has been replaced with her initials.

witnesses will testify that the transcript of [L.W.] was altered by your action as the course taken by [L.W.] that was not timely completed by her was removed from her transcript by you without the consent or knowledge of any person. There may be events that are not known to some of the witnesses listed.

As provided by *O.C.G.A. § 20-2-940 (a)*, the grounds for the termination of a teacher's contract of employment are as follows:

- (a) **Grounds for termination or suspension. Except as otherwise provided in this subsection, the contract of employment of a teacher, administrator, or other employee having a contract for a definite term may be terminated or suspended for the following reasons:**
- (1) **Incompetency;**
 - (2) **Insubordination;**
 - (3) **Willful neglect of duties;**
 - (4) **Immorality;**
 - (5) **Inciting, encouraging, or counseling students to violate any valid state law, municipal ordinance, or policy or rule of the local board of education;**
 - (6) **To reduce staff due to loss of students or cancellation of programs and due to no fault or performance issue of the teacher, administrator, or other employee. In the event that a teacher, administrator, or other employee is terminated or suspended pursuant to this paragraph, the local unit of administration shall specify in writing to such teacher, administrator, or other employee that the termination or suspension is due to no fault or performance issues of such teacher, administrator, or other employee;**
 - (7) **Failure to secure and maintain necessary educational training;** or
 - (8) **Any other good and sufficient cause.**

A teacher, administrator, or other employee having a contract of employment for a definite term shall not have such contract terminated or suspended for refusal to alter a grade or grade report if the request to alter a grade or grade report was made without good and sufficient cause.

Further, the Local Board contends that Appellant is required by *O.C.G.A. § 20-2-984.1(b)* to comply with the code of conduct and that failure to comply with *O.C.G.A. § 20-2-984.1(b)* constitutes insubordination and other good and sufficient cause as provided by *O.C.G.A. § 20-2-940 (a)*.

The charge letter sets forth the grounds for termination: an ethical violation, willful failure to perform in a professional manner, and failure to act consistently with the instructions of Appellant's supervisor for Appellant's unauthorized action in modifying the grade of her daughter, L.W. It was not until the Local Board filed its brief in response to this appeal that it specified the Appellant violated Standard 4 and Standard 10 of the Code of Ethics of the Professional Standards Commission. Standards 4 and 10 provide in pertinent part:

Standard 4: Honesty – An educator shall exemplify honesty and integrity in the course of professional practice. Unethical conduct includes but is not limited to, falsifying, misrepresenting or omitting:

2. **information submitted to federal, state, local school districts and other governmental agencies;**
3. **information regarding the evaluation of students and/or personnel;**
- ...
5. **information submitted in the course of an official inquiry/investigation;**
6. **information submitted in the course of professional practice.**

Standard 10: Professional Conduct – An educator shall demonstrate conduct that follows generally recognized professional standards and preserves the dignity and integrity of the education profession. 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.

To the extent that the Local Board contended that Appellant violated specific provisions of the Code of Ethics of the Professional Standards Commission, it should have so specified in the initial charge letter or in response to the Appellant's written request for more specific information that was submitted to the Local Board prior to the hearing. It is patently unfair for the Local Board to raise the allegations at this point in the proceedings. As a practical matter, however, the Local Board claims that Appellant's unauthorized action in modifying the grade of L.W. is the factual basis upon which Appellant should be found to have committed an ethical violation, willfully failed to perform in a professional manner, and failed to act consistently with the instructions of Appellant's supervisor. The credible evidence does not support a factual finding that Appellant was not authorized to modify L.W.'s transcript. Both Appellant and Ms. Dean testified that they received no training at Cairo High School regarding making changes to students' transcripts. Moreover, they both testified that guidance counselors are authorized to correct errors on students' transcripts. There is no evidence in the record that Appellant failed to act consistently with the instructions of her supervisor. More importantly, it is not clear from the evidence as to the identity of the Appellant's supervisor or the instructions with which Appellant failed to comply. It appears that Ms. York may have had some authority over the guidance counselors, but while she was present for the hearing, she did not testify. There being no evidence to support the factual allegations made by the Local Board, the Local Board erred in finding that Appellant's actions were grounds for termination of her employment contract as alleged in the charge letter.

Further, Appellant's contentions that there was confusion as to the summary of the evidence, what the witnesses would say, and what was the cause for any charges in sufficient detail so that Appellant would be able to show error are without merit. The requirements regarding notice are as follows:

(b) Notice. Before the discharge or suspension of a teacher, administrator, or other employee having a contract of employment for a definite term, written notice of the charges shall be given at least ten days before the date set for hearing and shall state:

- (1) The cause or causes for his or her discharge, suspension, or demotion in sufficient detail to enable him or her fairly to show any error that may exist therein;**
- (2) The names of the known witnesses and a concise summary of the evidence to be used against him or her. The names of new witnesses shall be given as soon as practicable;**
- (3) The time and place where the hearing thereon will be held; and**
- (4) That the charged teacher or other person, upon request, shall be furnished with compulsory process or subpoena legally requiring the attendance of witnesses and the production of documents and other papers as provided by law.**

O.C.G.A. § 20-2-940 (b).

Contrary to Appellant's contentions, the charge letter includes the conduct that precipitated the termination of Appellant's conduct, namely, changing L.W.'s grade. The charge letter also sufficiently describes the anticipated testimony of the witnesses. In light of the State Board's finding that there is no factual evidence to support the Local Board's decision, these contentions are moot.

Evidentiary Hearing

Appellant contends that the Local Board failed to consider proper issues and admit key evidence in violation of her due process rights. As Appellant indicated in her brief, she obtained documentary evidence via the subpoena process. To the extent that Appellant contends that the Local Board failed to comply with a Georgia Open Records request, her remedy lies with the superior court, and not this Board. See *O.C.G.A. § 50-18-73*. See also, *Olivia Harris v. Atlanta Independent School System*, (Ga. SBE, Jan. 2013) (*The hearing officer had no authority to enforce Open Records Act violations.*).

Appellant did not specify what key evidence was not admitted in the hearing. To the extent that Appellant is referring to the exclusion of the polygraph examiner, Appellant acknowledges in her brief that such evidence is allowed upon agreement of the parties. No such agreement occurred

in the instant case. The exclusion of the testimony of the polygraph examiner is not reversible error.

V. CONCLUSION

For the foregoing reasons, the decision of the Local Board is **REVERSED**.

This 15th day of June, 2017.



KEVIN D. BOYD
VICE CHAIR FOR APPEALS