**STATE BOARD OF EDUCATION**
**STATE OF GEORGIA**

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| **JAMEL HARRIS,** | : | |
| | : | |
| **Appellant,** | : | |
| | : | **CASE NO.: 2023-27** |
| **v.** | : | |
| | : | **DECISION** |
| **MUSCOGEE COUNTY BOARD OF EDUCATION,** | : | |
| | : | |
| | : | |
| **Appellee.** | : | |

This is an appeal by Jamel Harris ("Appellant") from the decision of the Muscogee County Board of Education ("Local Board") to impose a one-day suspension without pay and issue a letter of reprimand for insubordination. For the following reasons, the decision of the Local Board is hereby **REVERSED.**

## I. FACTUAL BACKGROUND

The Appellant was a math teacher at Hardaway High School ("HHS"). He also served as the head coach of the HHS dance team. Because of a complaint[1] lodged against him by a member of the dance team, the Appellant was reassigned to Baker Middle School, effective September 29, 2022. Moreover, effective September 26, 2022, the Appellant was no longer allowed to coach the HHS dance team. The Appellant was initially notified of his reassignment during a conversation with members of the Muscogee County School District ("District") on September 26, 2022 and subsequently by email of October 2, 2022 and letter of October 4, 2022.

On Thursday, October 13, 2022, HHS played an away football game against Westover High School ("Westover") in Albany, Georgia. The Appellant planned to spend the weekend in Albany where he would attend the HHS game on Thursday, go to a doctor's appointment on Friday, and attend his college homecoming game on Saturday.

The Appellant went to the HHS-Westover game to visit his college friend, Ms. Baker, who was the cheer coach for Westover. The Appellant arrived at the game shortly before halftime. He wore an HHS track and field sweatshirt[2] that he had worn to work that day. He sat in the stands on the HHS side away from the band. At halftime, the Appellant walked to the track where Ms. Baker was located. He stood on the track near the field. The Dougherty County Police allowed the Appellant in the area, and they told the Appellant that he would have to wait until halftime ended before he could return to his seat. Both schools performed during halftime. The District showed a photo of the Appellant at halftime. The picture reflected the Appellant standing near the

[1] A member of the dance team alleged that the Appellant hit her. The action taken by the District relative to the allegation made by the dance team member is not the subject to this appeal.
[2] When the Appellant was the head coach of the HHS dance team, he wore dance attire that matched the team. He did not wear dance attire to the HHS-Westover game.

Westover cheer team, not the HHS dance team. After the halftime performances ended, the Appellant waited for the halftime participants to leave and followed behind them to his seat in the stands.

A dance team member, the dance team manager, and a cheer team member from HHS were at the HHS-Westover game. They all testified that the Appellant did not coach the dance team at the game. Moreover, the two students affiliated with the dance team stated that at the end of September, the Appellant notified the team that he was no longer the coach, and he did not coach the team thereafter.

## II. PROCEDURAL HISTORY

By letter of October 21, 2022, the District's superintendent, David F. Lewis ("Superintendent"), reprimanded the Appellant and imposed a one-day suspension without pay for insubordination, pursuant to O.C.G.A. § 20-2-940(2). The Superintendent stated that the basis for the discipline was that the Appellant acted in the capacity of the dance team coach at the HHS-Westover football game by being on the sideline with the dance team, walking with the dance team as they went to perform during halftime, and walking with and recording the dance team after they completed their halftime performance and went back to the stands. The Appellant appealed the Superintendent's decision to the Local Board.

On November 18, 2022, the Local Board issued a notice of hearing and charges. The Appellant was charged with insubordination pursuant to O.C.G.A. § 20-2-940(a)(1) on the basis that he failed to comply with instructions not to return to HHS and not to coach the Hardaway Dance team, and any other good and sufficient cause pursuant to O.C.G.A. § 20-2-940(a)(8).

A hearing took place on December 6, 2022. The Local Board affirmed the Superintendent's recommendation of a reprimand and one-day suspension without pay for insubordination. The Appellant appealed the decision of the Local Board to the State Board of Education ("State Board").

## III. STANDARD OF REVIEW

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. Searles*, 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. *Dukes-Walton v. Atlanta Indep. Sch. Sys.*, 336 Ga. App. 175, 784 S.E.2d 37 (2016); *King v. Worth Cnty. Bd. of Educ.*, 324 Ga. App. 208, 749 S.E.2d 791 (2013).

## IV. DECISION

### A. Due Process

#### 1. Notice

The Appellant contends that he did not receive proper notice of the charges against him as required by the Fair Dismissal Act.

In that regard, O.C.G.A. § 20-2-940(b) provides:

> (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.

As to the issue of notice, this Board noted in *Nigil Smith v. Atlanta Pub. Sch. Sys.*, Case No. 2011-26 (Ga. SBE, Jan. 2011):

> "An essential principle of due process is that a deprivation of life, liberty, or property 'be preceded by notice and opportunity for hearing appropriate to the nature of the case.'" *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542, 105 S. Ct. 1487 (1985), *quoting Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). "[T]he root requirement" of the Due Process Clause [is] 'that an individual be given an opportunity for a hearing before he is deprived of any significant property interest.'" *Loudermill*, 470 U.S. at 542, *quoting Boddie v. Connecticut*, 401 U.S. 371, 379 (1971). Thus, "[t]he fundamental idea of due process is notice and an opportunity to be heard." *Swafford v. Dade County Bd. of Commissioners*, 266 Ga. 646, 647 (1996).

Further, with regard to the adequacy of notice "[t]he test to be applied is whether the notice permits the person charged to establish a defense without the benefit of any discovery." *Haire v. Talbot Cnty. Bd. of Educ.*, Case No. 1993-12 (Ga. SBE, Aug. 1993).

The Appellant argues that the notice relative to the dance team member's allegation of assault was inadequate.

At the hearing, the District presented some evidence regarding the incident with the dance team member in order to explain why the Appellant was instructed not to coach the dance team. The merits of that student's allegation were not at issue at the hearing and were not the subject of the charges against the Appellant. Moreover, as a result of the incident with the dance team member, the Appellant was transferred to Baker Middle School. The Fair Dismissal Act does not apply to transfers. See O.C.G.A. § 20-2-943(b). Likewise, the notice requirements of O.C.G.A. § 20-2-940(b) do not apply to that matter. Accordingly, the State Board finds that the Appellant's argument that the District violated the notice requirements as to the allegation made by a dance team member lacks merit.

The Appellant also argues that the notice relative to the insubordination charge was inadequate. Specifically, the Appellant asserts that the charge letter did not list any witness who had first-hand knowledge that he had been insubordinate or any witness who had observed him coaching at the HHS-Westover football game.

The record shows that the charge letter identified those witnesses whom the District presented at the hearing. Whether those witnesses had first-hand knowledge of the Appellant's conduct is irrelevant to the issue of notice. The State Board finds that the Appellant's argument that the notice was inadequate is without merit.

2. Hearsay

The Appellant asserts that the District used inadmissible hearsay to prove that he struck a student and that he was insubordinate.

The District did not charge the Appellant with striking a student, nor did the Local Board find the Appellant guilty of striking a student. The Appellant has not properly raised this issue for the State Board's consideration.

With regard to the issue of insubordination, "[t]he strict rules of evidence prevailing in courts of law shall not be applicable to hearings before [local boards]." Ga. Comp. Rules and Regs. r. 160-1-3-.04(3)(a)(5). With regard to hearsay, this Board has previously held that "its admission in an administrative hearing is not reversible error and it can be admitted to support direct evidence." *B.W. v. Hall Cnty. Bd. of Educ.*, Case No. 2005-24 (Ga. SBE, Apr. 2005). Hearsay evidence cannot, however, be the sole basis for the tribunal's decision. *Id.* See also, *Dr. Bronwyn Randel v. Rabun Cnty. Bd. of Educ.*, Case No. 2019-20 (Ga. SBE, June 2019); *J.O. v. Bibb Cnty. Bd. of Educ.*, Case No. 2003-01 (Ga. SBE, Oct. 2002).

In this case, the testimony of the District's witnesses was not the sole evidence presented at the hearing. The Appellant and the student witnesses called by the Appellant at the hearing testified as to the Appellant's conduct at the football game. Their testimony was admissible direct evidence upon which the Local Board may have relied in reaching its decision. Therefore, to the extent that the hearing officer improperly admitted hearsay, it was harmless error. *Laura Lepley v. Fulton Cnty. Bd. of Educ.*, Case No. 2013-68 (Aug. 2013).

**B. Record Evidence**

Pursuant to the Fair Dismissal Act, the District had the burden of proof at the hearing. O.C.G.A. § 20-2-940(e)(4). The standard of review for this appeal is 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).

The Appellant contends that the District did not present sufficient evidence that the Appellant was insubordinate. In its November 18, 2022 charge letter, the District notified the Appellant that the Superintendent recommended a one-day suspension for insubordination. The charge letter further provided that the Appellant was guilty of insubordination pursuant to O.C.G.A. § 20-2-940(a)(1) "in that Mr. Harris failed to comply with the instruction not to return to Hardaway High and not to coach the Hardaway Dance team.... Instead of complying with the directive Mr. Harris proceeded to attend the dance team's performances and communicate with members of the dance team; and (a)(8) and any other good and sufficient cause, as evidenced by witness testimony and supporting documents."

In reaching its decision, the Local Board's verdict form specifically stated:

> The Board accepts the Superintendent's letter of reprimand and recommendation for the suspension of Jamel Harris insofar as there is a finding of insubordination in that after Mr. Harris was advised he could not return to Hardaway and could no longer coach the Hardaway Dance team, ~~Mr. Harris proceeded to attend the dance team's performances and communicate with members of the dance team and for good and sufficient cause~~. (Edits in the original.)

The District presented the verdict form to the Local Board prior to the Local Board's deliberations. The Local Board specifically excluded the proposed findings that the Appellant "proceeded to attend the dance team's performances and communicate with members of the dance team and for good and sufficient cause" as bases for its decision.

The District alleged that the Appellant coached the dance team at the HHS-Westover game. The District did not establish what the duties of the dance team coach entailed, nor did the District present evidence that the Appellant engaged in conduct that may be consistent with coaching, such as giving instruction to the team. Rather, the District's position was that the Appellant's presence at the game and standing near the sidelines or track area of the field during halftime indicated that the Appellant was coaching the dance team. The District's position was clearly rejected on the Local Board's verdict form where the Local Board struck through the proposed findings that "Mr. Harris proceeded to attend the dance team's performances and communicate with members of the dance team and for good and sufficient cause." While the District did not call any member of the dance team to testify as to whether the Appellant was coaching the team at the game, the Appellant called a dance team member, the dance team manager, and a cheer team member as witnesses. The students were at the HHS-Westover game, and they testified that the Appellant did not coach the dance team. The Appellant also testified that he did not coach the dance team. Further, as to the assertion that the Appellant went to HHS after being told not to, the Principal admitted on cross-examination that he gave the Appellant written permission to return to HHS to pick up his

belongings. The District failed to prove any other occasions that the Appellant accessed HHS without permission. The District did not present testimony from any school staff member who witnessed the Appellant's unauthorized visit to HHS. The Appellant denied making any unauthorized visits to the school.

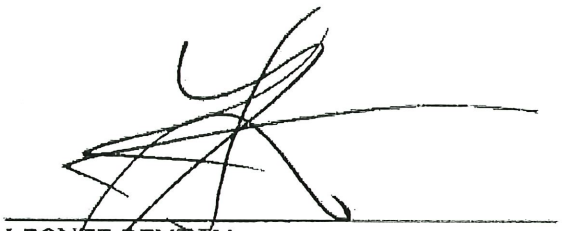
In reviewing this appeal, the State Board must apply the "any evidence rule." Thus, if there is any evidence to support the Local Board's decision, this Board must affirm it. See *Ransum v. Chattooga Cnty. Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978). See also, *Chattooga Cnty. Bd. of Educ. v. Searels*, 302 Ga. App. 731, 691 S.E.2d 629 (2010). "Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law." *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794, 798, 804 S.E.2d 427, 432 (2017). An abuse of discretion occurs "if the Local Board misapplied the relevant law or if its rulings are not supported by the evidence." *Id.*

The record does not support the Local Board's decision. Accordingly, the Local Board's decision is arbitrary and capricious.

## V. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board that the evidence does not support the decision of the Local Board. Therefore, the State Board **REVERSES** the decision of the Local Board.

This 11th day of May 2023.



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