

WHICKLEFF J. CHAPITAL

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NO. 2000-CA-0646

VERSUS

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COURT OF APPEAL

**ORLEANS PARISH SCHOOL
BOARD**

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FOURTH CIRCUIT

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STATE OF LOUISIANA

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PLOTKIN, J., DISSENTS WITH REASONS:

The majority overlooks the language of Title 17, in addressing appellant's removal from his tenured teaching position. Title 17 clearly contemplates a lesser penalty than termination for tenured teachers disciplined by the school board.

La. R.S. 17:462(B) provides, in pertinent part:

If a permanent teacher is found guilty by the school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or immorality, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the state of Louisiana, and *ordered removed from office or disciplined* by the said board, the teacher may, not more than one year from the date of said finding, petition a court of competent jurisdiction for a full hearing to review the action of the school board, and the court shall have jurisdiction to affirm or reverse the action of the school board in the matter. (emphasis added).

Furthermore, the “removal from office” provision in tenure law applies to demotion or reduction of salary as well as to discharge or dismissal. Brooks v. Orleans Parish School Board, (La. App. 4 Cir. 1989), 550 So. 2d 1267, 1273, writ denied, 553 So. 2d 466 (La. 1989); see also Rosenthal v. Orleans Parish School Board, (La. App. 4 Cir. 1968), 214 So. 2d 203, writ denied, 252 La. 963, 215 So. 2d 130 (La. 1968).

Under the provisions of Title 17, the school board has a duty to consider alternative punishment to termination when disciplining a tenured teacher for willful neglect of duty. See Rubin v. Lafayette Parish School Board, 93-473, p. 16 (La. App. 3 Cir 12/14/94), 649 So. 2d 1003, 1016, writ denied, 95-0845 (La. 5/12/95), 654 So. 2d 351 (Ballot limiting the school board to decide whether or not to terminate tenured teacher, removed the board’s authority to impose lesser punishment); Jones v. Rapides Parish School Board, 634 So. 2d 1197, 1200 (La. App. 3 Cir. 1993) (School board decision to terminate tenured teacher was arbitrary when the board had previously only suspended another tenured teacher for the identical offense). The school board’s “authority to impose a disciplinary measure short of termination in a Tenure case is non-delegable.” Rubin at p. 16, 649 So. 2d at 1016.

In the instant case, the Orleans Parish School Board abused its

discretion by approving an arbitrary resolution to terminate appellant without consideration of any lesser discipline. Appellant was a tenured teacher, and as such had acquired job protection. Although the school board claims appellant had committed prior acts of willful neglect of duty, appellant's act of striking a child, in an attempt to break up a physical altercation on school grounds, was a relatively minor offense and his first real violation of school policy. It is clear that appellant did in fact strike the student. This act was certainly a poor choice in judgment; however, it is not deserving of the maximum punishment allowed under Title 17.

Accordingly, I would reverse the judgment of the trial court, set aside the ruling of the Orleans Parish School Board, and remand to the Board for a hearing on an alternative lesser penalty.

For the foregoing reasons, I respectfully dissent.