

06/29/01

**SUPREME COURT OF LOUISIANA**

**No. 00-C-3234**

**JAMES HOWARD**

**versus**

**WEST BATON ROUGE PARISH SCHOOL BOARD**

KNOLL, J., dissenting.

Although the majority opinion recognizes that willful neglect of duty may be found where a tenured teacher has knowledge that his actions are contrary to school policy or from general knowledge concerning the responsibilities and conduct of teachers, the opinion turns on a finding that the School Board had to prove that Howard either acted or failed to act in contravention of a direct supervisory order or against an identifiable school policy. In making this determination, the majority fails to acknowledge that willful neglect of duty may arise from the tenured teacher's general knowledge concerning the responsibilities and conduct of teachers.

By virtue of his education, experience, and certification, Howard was required to conduct himself according to the dictates of professional and common sense, even in the absence of a specific policy prohibiting his conduct. Sylvester v. Cancienne, 95-0789 (La. App. 1 Cir. 11/9/95), 664 So. 2d 1259, 1264, writ not considered, 95-3128 (La. 1/26/96), 666 So. 2d 663. "[A] classroom teacher, merely by the nature of that position should be aware of the impropriety of some practices." Simon v. Jefferson Davis Parish School Bd., 289 So. 2d 511, 517 (La. App. 3 Cir.), writ denied, 293 So. 2d 178 (La. 1974); see also Cunningham v. Franklin Parish School Bd., 457 So. 2d 184, 189 (La. App. 3 Cir.), writ denied, 461 So. 2d 319 (La. 1984).

By virtue of the legislative enactment of numerous statutes, it is clearly the policy of this State to protect students from firearms on school campuses. LA. REV. STAT. ANN. §§ 14:95.2, 14:95.6 (recognizing the establishment of gun free school zones); LA. REV. STAT. ANN. §§ 17:416.3(A)(2)(b) and 17:416.6 (permitting random searches and the use of metal detectors in schools); LA. REV. STAT. ANN. §§ 17:416.(C)(2)(a)(i), (b)(i), and (c)(i) (establishing mandatory suspension and expulsion guidelines for students who possess handguns on school property). Thus, professionalism and common sense suffice to establish that Howard had a duty not to bring a firearm in his vehicle and to park that unlocked vehicle<sup>1</sup> just outside his classroom.

Having found that the School Board established a general duty for Howard to follow, I further find that even though there was contradictory evidence presented, there was a rational basis for the School Board's determination that Howard's actions were willful, i.e., voluntary and knowing. Howard testified that he was aware that a loaded gun was customarily kept in the vehicle he brought to the school campus on October 4, 1996. Likewise, when Howard reported the theft of the handgun to Deputy Shawn Schexnaildre, Howard told Schexnaildre that he knowingly brought the handgun to the campus because a student had threatened him. Although Howard later disputed Schexnaildre's recollection, the lower courts resolved this credibility issue against Howard. The majority decision of this Court now upsets the findings of the lower courts and substitutes its judgment for that of the local school board. In stark contrast to the majority decision, I find a rational basis for the school board's determination supported by substantial evidence. Accordingly, I would uphold the

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<sup>1</sup> As noted by Howard and Deputy Schexnaildre, the vehicle must not have been locked because there was no evidence of a forced entry.

decisions of the lower courts. Therefore, I respectfully dissent from the majority opinion.