

STATE BOARD OF EDUCATION

STATE OF GEORGIA

APR 19 1978

JEANNETTE WRIGHT,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1978-4
	:	
DODGE COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

O R D E R

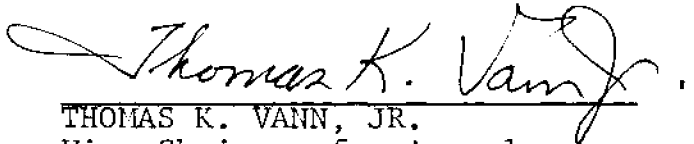
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decisions of the Dodge County Board of Education herein appealed from, be, and they are hereby affirmed.

Mr. Kilpatrick was not present.

This 13th day of April, 1978.


 THOMAS K. VANN, JR.
 Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JEANNETTE WRIGHT,	:	CASE NO. 1978-4
Appellant,	:	
vs.	:	
DODGE COUNTY BOARD OF	:	
EDUCATION,	:	REPORT OF
Appellee.	:	HEARING OFFICER

PART I

SUMMARY OF APPEAL

The Dodge County Board of Education (hereinafter "Local Board") held a hearing on November 30, 1977, and at the conclusion of the hearing rendered a decision ordering the termination of the teaching contract of Jeannette Wright (hereinafter "Appellant"). The reasons given for the termination were incompetency and willful neglect of duties. The specific charges were that Appellant had unjustified absences from the school and that the Appellant appeared in class under the influence of intoxicating liquors and with the odor of alcohol on her breath. The appeal to the State Board of Education was made on the grounds that the decision of the Local Board was arbitrary and capricious, and that the hearing was procedurally deficient.

PART II

FINDINGS OF FACT

On November 18, 1977, the Superintendent notified Appellant by letter that she was temporarily relieved from duty due to alleged incompetency and willful neglect of duties. The specific charges listed were

- (1) absence from school without lawful reason on specified dates and
- (2) attendance at school under the influence of alcohol with an alcoholic breath.

The written notice specified that a hearing would be held on November 30, 1977 and a list of witnesses with a summary of their testimony was set forth.

The record discloses that Appellant was on her first teaching contract with the Dodge City School System. She was absent from her teaching duties on August 29, 30, and 31, September 1, 19, 20, and 21, October 4, 5, 6, and 7, and November 7, 8, 9, 10, and 11, 1977. On all of the dates with the exception of the November dates, Appellant had called the principal of the elementary school where she taught and received permission to be absent because of sickness. On November 7 and 8, 1977, Appellant was at

school and was given permission to leave when she stated that she was sick. The principal did not require Appellant to submit doctor's certificates of her sickness although Appellant had offered them.

The principal and several teachers testified that on numerous occasions, including the dates specified in the charges, they smelled alcohol on Appellant's breath. Appellant testified that any odors on her breath were from medicines that she was taking. Appellant further testified that her absences were due to the fact that she was having severe menstrual problems and was under a doctor's care and receiving prescribed medicine.

Following the presentation of evidence, the Local Board voted to terminate Appellant's contract effective November 30, 1977. The appeal was filed with the Superintendent on December 15, 1977.

PART III

CONCLUSIONS OF LAW

Under the provisions of Ga. Code Ann. §32-2101c the contract of a teacher may be terminated for eight different reasons, among which are incompetency and willful neglect of duties. The Local Board argues that unjustified absences and appearing in class under the influence of intoxicating

liquors and with an odor of alcohol on the breath are also reasons for dismissal. These reasons, however, are but specific charges which must fall within one of the eight statutory reasons for dismissal. They cannot stand alone as reasons for dismissal as contended by the Local Board.

Appellant argues that the decision of the Local Board was erroneous in that there was no showing of incompetency or willful neglect of duties. Appellant also argues that the Local Board failed to establish that the absences were unjustified. It is the Appellant's position that the decision of the Local Board must be overturned because of the failure to establish the two statutory causes for dismissal.

As set forth in the initial written notice to Appellant, the specific grounds for recommending her dismissal were incompetency and willful neglect of duties "due to unjustifiable absences. . .and appearing in class under the influence of intoxicating liquors and the odor of alcohol on your breath". The specific charges, therefore, related to both incompetency and willful neglect of duties. In other words, the school system charged Appellant with incompetency because of the absences and the alcohol, and also charged Appellant with willful neglect of duties because of the absences and the alcohol. Appellant, therefore, cannot claim that the Local Board failed to establish either incompetency

or willful neglect of duties if the Local Board found evidence to support the specific charges.

The Local Board did not enter any findings of fact, but there is evidence in the record which establishes that Appellant was in school with the odor of alcohol on her breath on several different occasions. It does not, however, appear that the school system carried the burden of proof in establishing that the absences from school were unjustified. It was the policy of the school system to permit teachers to be absent from school because of sickness and the school system did not present any evidence that Appellant was not sick when she was absent. The Local Board must, therefore, have determined that Appellant was incompetent and willfully neglected her duties because she had the odor of alcohol on her breath.

The principal and the teachers all testified that Appellant was a good teacher. There was no evidence that Appellant ever appeared in the school in an intoxicated condition such that she did not have complete control of herself. It appears that if Appellant had been an eater of garlic, she might be without friends, but she would not be without work. This illustrates the problems of a local board not making specific findings at the conclusion of the hearing. Teachers, however, hold a special standing within the community. While the community may not require or

expect any greater degree of special aptitude or conduct than would be expected of the remainder of the community, they do expect a higher standard when it relates to the special relationship that a teacher has with the children of the community. Thus, when a teacher appears in the classroom with the odor of alcohol being detectable by the children, it could have an adverse effect on the teacher's credibility or the view the students might adopt towards the consumption of alcohol. The Hearing Officer, is, therefore, of the opinion that when a teacher repeatedly appears in a classroom with the odor of alcohol on his or her breath, then a local board of education is authorized to find that the teacher is incompetent, or has willfully neglected his or her duties. See, Hobby v. Tift County Board of Education, Case No. 1977-6 (termination sustained for good cause where being under the influence of alcohol was one of the charges).

Appellant also raises the issue that the hearing conducted was procedurally deficient for a number of reasons. The first of these reasons was that the initial letter sent by the superintendent to Appellant was worded in such a manner that it tended to taint the impartiality required of the board members as decision makers. It was not, however, shown that the impartiality of the board members was tainted. Appellant also has not shown any requirement that an accusation be worded in such a manner that it would remove all

suggestions that the accusation should not have been made. The Hearing Officer is of the opinion that the initial letter did not taint the impartiality of the Local Board.

The second and third procedural deficiencies alleged by Appellant were that the board chairman improperly heard some of the evidence prior to the hearing and that the board chairman abdicated his responsibility as presiding officer to the attorney for the school system. Again, there was not any showing that these actions of the chairman would have or did affect his ability to conduct the proceedings and render a fair and impartial decision.

The fourth point made by Appellant was that some of the witnesses were allowed to testify beyond those matters indicated in the concise summary of each witness' testimony in the superintendent's letter of November 18, 1977. It is Appellant's position that the witnesses should have been limited in their testimony to the fact that they smelled alcohol on Appellant's breath and they should not have been permitted to testify about Appellant's actions they observed at the same time. Appellant argues that Ga. Code Ann. §32-2101c(b) requires that a concise summary of the evidence be given to a teacher and this requires that the notice specifically set forth each and every point about which the witness will testify. The purpose of a statutory notice requirement is to permit the accused to adequately prepare a defense. When

the name of a witness and the nature of the testimony to be given is made known to the teacher, the teacher has the ability to determine if the witness has related knowledge. There does not appear to be any requirement that the "consise summary" detail all of the testimony that will be given by a witness. If the testimony relates to the incident or incidents set forth in the notice, it can properly be admitted.

The last error complained of by Appellant was that the Local Board did not specifically set forth the findings of fact and conclusions of law. The State Board of Education, however, has determined that it is unnecessary for a local board of education to enter findings of fact and conclusions of law. Beard v. Laurens County Board of Education, Case No. 1977-14.

PART IV

RECOMMENDATION

Based upon the record submitted, the briefs and argument of counsel, and the above findings and conclusions, the Hearing Officer recommends that the decision of the Dodge County Board of Education to terminate the contract of Appellant be sustained.



L. O. BUCKLAND
Hearing Officer