

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JAMES C. HOLLIDAY,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1978-9
	:	
COLUMBIA 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 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

Without deciding on the substantive evidence presented, the State Board of Education further determines and orders that the decision of the Columbia County Board of Education herein appealed from be reversed because due process was denied Appellant.

SO ORDERED, this 18th day of July, 1978.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

JAMES C. HOLLIDAY,	:	CASE NO. 1978-9
	:	
Appellant,	:	
	:	
vs.	:	
	:	
COLUMBIA COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	
	:	HEARING OFFICER
Appellee.	:	

PART I

SUMMARY OF APPEAL

On January 3, 1978, the Columbia County Board of Education (hereinafter "Local Board") denied a motion made by James C. Holliday (hereinafter "Appellant") to reconsider its December 15, 1977 decision to terminate Appellant's teaching contract. The initial decision to terminate Appellant was based on the Local Board's findings that Appellant: (1) failed "to maintain adequate control of the classroom over a prolonged period of time"; (2) failed "to abide by . . . [Local Board] policies in relation to handling of disciplinary problems," and (3) "conduct unbecoming a teacher while dealing with student discipline problems." The appeal asserts that (1) there was a denial of due process; (2) Appellant's rights

under Georgia Code Section 32-2101c were violated; (3) the evidence did not support the charges; (4) the decision of the Local Board was arbitrary and capricious and not based on the facts presented; (5) the charges did not constitute good and sufficient cause to terminate, and (6) the procedures used by the Local Board did not comply with the provisions of the 1975 Fair Dismissal Law of Georgia. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On November 18, 1978, Appellant was sent a letter which stated that he was suspended from his teaching position at the Columbia Junior High School and that a recommendation of termination would be heard by the Local Board on December 6, 1977. The reasons for the recommendation were stated and the witnesses for the school system were identified as the principal, the assistant principal, and "students of your classes."

The hearing before the Local Board began on December 6, 1977 and was continued to and completed on December 15, 1977. The Local Board made its decision to terminate Appellant on December 15, 1977. Appellant was

notified of the decision in a letter from the Associate Superintendent dated December 16, 1977. On December 21, 1977, Appellant filed an appeal to the State Board of Education and also moved the Local Board to reconsider its December 15, 1977 decision. On January 5, 1978, Appellant was notified that the Local Board had met on January 3, 1978 and voted to reaffirm its decision to terminate Appellant. Another notice of the appeal to the State Board of Education was filed with the Superintendent on January 27, 1978.

Appellant was teaching in his first year with the school system. On October 28, 1977, the principal had a conference with Appellant concerning the discipline in Appellant's classrooms. The conference was followed by a letter from the principal, dated October 31, 1977, in which the principal requested Appellant to "make an immediate effort to clear" up deficiencies in failing to maintain order, failing to abide by county policies, and "office reports done inefficiently". The principal listed specifics under each broad deficiency. Also included in the letter was the following:

"All of the above infractions must be cleared up within the next three weeks (November 18, 1977). If they are not cleared up by this time, I am going to request you to resign your position."

On November 16, 1977, a male student from Appellant's room reported to the principal that Appellant had grabbed him

by the shirt collar and dragged or pulled him to his seat. The principal questioned other students about the incident and then dismissed Appellant the next day.

When the hearing was convened on December 6, 1977, the Local Board would not permit Appellant to remain in the hearing room when the witnesses were questioned. Appellant's attorney objected to the procedure at the beginning of the hearing but he was overruled. The attorney then agreed to permit the hearing to go forward with both Appellant and the principal remaining outside the hearing room. The hearing proceeded with Appellant's counsel in the hearing room.

Testimony during the hearing established that Appellant began the school year with thirty-five to thirty-eight eighth grade students assigned to his second-period class. It was primarily this class that was responsible for Appellant's difficulties. Following the October 28, 1977 conference, four or five of the students were transferred out of the classroom when another instructor was employed by the school system. There was no evidence presented that Appellant violated or failed to respond to the October 31, 1977 directives during the period October 31 through November 16, 1977. The testimony established that Appellant had a noisy classroom and some apparent discipline problems with some of the students, but the testimony did not indicate if the noise and

discipline problems existed after the conference. Appellant testified that the classes were improved after the students were transferred out of the classroom. It must, therefore, be concluded that except for the November 16, 1977 incident, Appellant complied with the October 31, 1977 directives of the principal.

The students who witnessed the November 16, 1977 incident, all eighth graders, testified that Appellant requested them to sit in their seats at the beginning of the class period. One of the male students did not sit down, but instead began "jumping around." Appellant grasped the student's collar and began taking him toward the student's desk. The student then shouted at the teacher and hit the teacher at least once in the chest. The teacher then "pulled," or "pushed," or shoved the student into a sitting position at the desk. Another student then moved his desk nearer the offending student. Appellant moved this student's desk back into line with the other desks and away from the offending student. Fifteen or twenty minutes later, the offending student and three others arose from their desks and walked out of the classroom, without Appellant's permission, and reported the incident to the principal's wife, a counselor in the school, and then to the principal. The principal's investigation and notice of proposed termination immediately followed the November 16, 1977 incident.

PART III
CONCLUSIONS OF LAW

One of the more fundamental rights granted by the Constitution of the United States is that an accused will have the opportunity to face the witnesses against him. See, Duttan v. Evans, 400 U.S. 74, 91 S.Ct. 210, 27 L.ed 213 (1970). This means that due process requires the presence of the defendant in the trial room during the conduct of the trial. See, Fowler v. Grimes, 198 Ga. 84, 31 S.E.2d 1974 (1944). This same right is available to a teacher who is being dismissed. Ga. Code Ann. §32-2101c(e) (rules of superior court are applicable). In the instant case the Local Board did not give Appellant an opportunity to remain in the hearing room while the hearing was being conducted. Appellant was not permitted to face any of the witnesses and he could not assist his counsel in the cross-examination of any of the witnesses.

Counsel for the Local Board argues that Appellant's right to remain in the hearing room was waived. The transcript does show that the hearing was held without Appellant's presence and that Appellant's counsel acquiesced in Appellant's removal from the hearing room. This acquiescence, however, does not establish that Appellant waived any of

his rights, especially when the record discloses that the objection to his removal was renewed at the beginning of the second day of the hearing. The Hearing Officer, therefore, concludes that the Local Board violated Appellant's due process rights by not permitting him to remain in the hearing room.

The three charges made against Appellant related to either incompetency or willful neglect of duties, both of which are statutorily authorized reasons for dismissal. Ga. Code Ann. §32-2101a. The first charge was that Appellant failed to maintain adequate control over his classroom. The only evidence presented to support this charge was the testimony of the students that "the class was noisy." A foundation, however, was never established for the opinions of the students. Appellant had more than the normal number of students assigned to his classes. It was not established whether the classes were noisier than other overcrowded classes, or if the Appellant had any greater difficulties than would normally be expected in the circumstances.

The second charge was that Appellant failed to abide by the Columbia County Board of Education policies in relation to the handling of discipline problems. This charge apparently refers to the deficiencies the principal outlined in his October 31, 1977 letter to Appellant. There

was no evidence presented that Appellant violated any Local Board policies during the period October 31, 1977 to November 16, 1977, and no evidence that Appellant violated any Local Board policies during the November 16, 1977 incident. There was conflicting testimony from the students that Appellant paddled them without an adult being present and Appellant denied such paddlings. He did, however, admit that on occasion he "joked around" with some of the students and pretended to paddle them without an adult being present. Since there was some evidence that paddlings occurred without the presence of an adult, the Local Board could have found that Appellant violated Local Board policies regarding the handling of discipline.

The third charge was that Appellant engaged in conduct unbecoming of a teacher while dealing with student discipline problems. The school system did not specify what conduct was deemed to be unbecoming. There was not any reference in the transcript to any conduct that was considered to be unbecoming. Because of the vagueness of the charges and the lack of any specific reference to unbecoming conduct, it is the opinion of the Hearing Officer that the school system effectively abandoned the charge.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the briefs and argument of counsel, and the record submitted, it is the opinion of the Hearing Officer that the Columbia County Board of Education failed to observe Appellant's due process rights when it excluded Appellant from the hearing room. It is, therefore, the recommendation of the Hearing Officer that the decision of the Columbia County Board of Education be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer