

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID L. McLEOD,	:	
	:	
Appellant,	:	CASE NO. 1982-21
	:	
vs.	:	
	:	
GORDON COUNTY BOARD OF	:	REPORT OF
EDUCATION,	:	HEARING OFFICER
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by David L. McLeod (hereinafter "Appellant") from a decision by the Gordon County Board of Education (hereinafter "Local Board") which found that he was incompetent and had willfully neglected his duties. As a result, the Local Board decided not to renew Appellant's contract as Administrative Assistant to the Superintendent and, instead, offered Appellant another position within the school system. The Professional Practices Commission had found that Appellant was not incompetent and had not willfully neglected his duties. The appeal is based upon Appellant's allegations that his due process rights were violated, that the Local Board erred by not recusing itself, and the decision was arbitrary and capricious and not supported by the evidence. The Hearing Officer recommended reversal of the Local Board's decision.

PART II

FINDINGS OF FACT

Appellant had been employed by the Local Board for thirteen years. During 1979-1980, Appellant began his duties as

Administrative Assistant to the Superintendent. On April 13, 1982, he was notified by the Local Superintendent that he would not be recommended for reemployment for the 1982-1983 school year. Prior to this notification, Appellant had not been given any indication that his job performance was unsatisfactory. Appellant requested a listing of charges and a hearing on the non-renewal in accordance with the Fair Dismissal Act. The Local Board referred the matter to the Professional Practices Commission and a hearing was held by a tribunal of the Professional Practices Commission on June 2, 1982.

Appellant was charged with incompetency and willful neglect of duty. The Professional Practices Commission tribunal found that Appellant had not made a timely application for Title I funds during the summer of 1980 when he first assumed his duties, and he similarly did not make a timely application for vocational education funds during the 1981-1982 school year. There was no loss of funds to the school system, however, when each of the applications was submitted. Subsequent applications were timely and correctly made. The tribunal also found that Appellant had not made a timely response to two letters left on his desk by the Local Superintendent. The Local Superintendent had been newly elected to his position and there were significant differences in his management style from those of the previous superintendent. The tribunal found that Appellant's failure to respond was the result of the differences rather than as a result of incompetency or willful neglect of duties. Based

upon a preponderance of the evidence, the Professional Practices Commission tribunal concluded that there was not any evidence that Appellant was incompetent or that he had willfully neglected his duties.

The Local Board met on July 23, 1982, to review the findings and recommendations made by the Professional Practices Commission tribunal. The Local Board adopted the findings made by the tribunal, but concluded that the evidence showed "that there has been a pattern of inability to meet performance from the Title I program application failure through the dereliction of carrying out specific instructions from his immediate supervisor..." The Local Board then concluded that incompetency and willful neglect of duty had been shown, and decided that Appellant would be offered a contract for a different, but similar, position for the 1982-1983 school year. The appeal to the State Board of Education was filed on August 20, 1982.

PART III

CONCLUSIONS OF LAW

The appeal to the State Board of Education is based upon Appellant's allegations that:

1. The decision of the Local Board is not supported by the evidence;
2. The decision of the Local Board was arbitrary and capricious;
3. Appellant's rights of due process were violated, and

4. The Local Board erred in failing to recuse itself upon Appellant's motion.

The Local Board has responded that the facts found by the Professional Practices Commission tribunal were sufficient to permit the Local Board to find incompetency and willful neglect of duties. Additionally, the Local Board argues that none of Appellant's due process rights were violated and the Local Board did not err in failing to recuse itself because all of the statutory procedures were followed and questioning of the Local Board members did not establish any basis for requiring the Local Board to recuse itself.

Since the Professional Practices Commission tribunal found that there was no evidence of incompetency or willful neglect of duties, and the Local Board adopted the findings of the Professional Practices Commission tribunal, Appellant maintains that there is no evidence to support the Local Board's decision. The Local Board, however, argues that the tribunal's findings that Appellant failed to make a timely application for Title I funds in 1980, that Appellant had not made a timely application for an agricultural vocational grant in 1982, and that Appellant had not made a timely response to two letters were sufficient to permit the Local Board to find incompetency and willful neglect of duties. The Local Board further argues that the determinations regarding incompetency and willful neglect of duties were properly made by the Local Board. The Professional Practices Commission tribunal's contrary findings

were conclusions drawn from the evidence, but such conclusions are properly within the domain of the Local Board.

The burden of proof rests with a local board of education in a hearing on charges brought against a teacher or other employee. Official Code of Georgia, § 20-2-940(e)(4) (formerly Ga. Code Ann. § 32-2101c(e)(4)). In order to sustain the charge of willful neglect of duties, a local board of education has to establish that the teacher or employee knowingly undertook to avoid performing assigned or expected duties. In the instant case, there was no evidence that Appellant willfully attempted to avoid his duties. The evidence shows that Appellant was employed with the knowledge he did not have experience with Title I grant applications, that he undertook to submit the application and was unaware that it was incomplete, the former superintendent, who was Appellant's then immediate supervisor, approved of the work performed by Appellant, and the application was immediately submitted and approved when Appellant became aware that the initial submission was inadequate. With respect to the application for agricultural vocational funds, Appellant was not initially notified that the teachers involved were submitting requests for aid and he overlooked their requests when he made the initial budget requests. Again, when the oversight was called to Appellant's attention, he had the requests submitted and they were approved without any loss of funds to the school. Appellant also failed to timely answer two letters placed upon his desk

by the new superintendent. Appellant, however, did take some action regarding the letters although he was unsure of his response because of the lack of any instructions by the new superintendent. The Hearing Officer concludes that that none of these incidents establishes any willful neglect of duty on the part of Appellant.

With respect to the charge that Appellant was incompetent for the same reasons he was charged with willful neglect of duty, the evidence shows that Appellant was employed without any experience in filing for Title I grant applications, but since the first incident, the subsequent applications have been timely made. The same situation existed regarding the agricultural vocational grants. Appellant's failure to make a timely response to two of many letters also does not establish that he was incompetent. As the Professional Practices Commission tribunal observed, Appellant's actions were the result of inexperience and a lack of familiarity with specific situations, but Appellant has demonstrated an ability to take corrective actions and avoid repetition of any problems. The Hearing Officer, therefore, concludes that the Local Board did not establish by a preponderance of the evidence that Appellant was incompetent.

Appellant has also alleged that he was denied due process because the Local Board did not afford him a fair and impartial hearing due to the fact the Local Board had hired a replacement for Appellant prior to the hearing. As a result, Appellant claims the Local Board was bound to find against him regardless

of the evidence. The Local Board argues that the fact it had hired another employee to replace Appellant does not deny Appellant due process. Owen v. Long County Bd. of Ed., 245 Ga. 647 (1980). Appellant argues that the Owen case is not applicable because the issue in the case was whether the question of due process had been raised at the hearing instead of being raised for the first time on appeal. Although Appellant has correctly stated the circumstances of the Owen case, the Supreme Court, nevertheless, explicitly stated that the hiring of a replacement "may tend to show that the local board considered its action ... final prior to the hearing, it is not conclusive as to that fact..." Id. at 649. The Hearing Officer, therefore, concludes that the hiring of another employee did not result in a denial of due process because of the lack of a fair and impartial hearing.

Appellant made a motion at the hearing that the Local Board recuse itself because it had already indicated a predisposition to adversely judge him. The Local Board refused and Appellant claims this was a reversible error. The members of the Local Board, however, were questioned about their ability to render a fair and impartial decision. Appellant did not present, or offer to present, any evidence to establish that any of the members of the Local Board had prejudged the case. The Hearing Officer, therefore, concludes that the Local Board did not commit reversible error by failing to recuse itself upon Appellant's motion.

PART IV
RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the evidence does not establish that Appellant was incompetent or willfully neglected his duties. The Hearing Officer, therefore, recommends that the decision of the Local Board should be reversed.

(Appearances: For Appellant - John Paul Jones; For Local Board - John Atkins Henderson.)

L. O. Buckland

L. O. BUCKLAND
Hearing Officer