

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CALVIN GORDON,

)

Appellant,

)

v.

)

CASE NO. 1985-47

JASPER 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 of the Hearing Officer are made the Findings of Fact of the State Board of Education, and by reference are incorporated herein, but concludes that there is evidence in the record to terminate Appellant's teaching contract for any other good and sufficient cause because of Appellant's failure to obtain special education certification,

DETERMINES AND ORDERS, that the decision of the Jasper County Board of Education herein appealed from is hereby sustained.

Mr. Owens was not present.

This 13th day of February, 1986.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CALVIN GORDON,)	
)	
Appellant,)	CASE NO. 1985-47
)	
v.)	
)	
JASPER COUNTY BOARD)	
OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Calvin Gordon (hereinafter "Appellant") from a decision of the Jasper County Board of Education (hereinafter "Local Board") terminating Appellant's teaching contract for failure to secure and maintain necessary educational training. Appellant contends on appeal that the Local Board did not prove he had failed to secure and maintain necessary educational training. The Hearing Officer recommends the decision of the Local Board be reversed.

PART II

FACTUAL BACKGROUND

Appellant has been a teacher for twenty six years in the State of Georgia. He has taught for the Local Board for the last nineteen years. He holds a life certificate to teach in elementary school (grades 1-8) and middle school (grades 4-8). For the school years 1981-82 through 1984-85, Appellant taught mentally handicapped special education students on a resource basis under

a probationary accelerated in-field certificate. He volunteered to teach in special education after the Administration requested he move from his math class to special education. For approximately fifteen years prior to that time he taught math in the sixth and seventh grades in Jasper County. His experience prior to coming to Jasper County included teaching reading, social studies, science and math. On December 20, 1984, Appellant's principal wrote him telling him that he was required to pass the teacher certification test in Mental Retardation (hereinafter "test"), and enclosed a copy of a letter from the State Department of Education's Certification Division which set forth that passing the test was necessary in order to add Mental Retardation to his DT-4 certificate. Appellant was ill when the test was given in February and did not take the test. He was notified by his principal that he would be given a conditional teaching contract for the 1985-86 school year. His contract was then made conditional upon Appellant's posting a passing score on the test. Appellant, by letter of June 27, 1985, notified the Local Superintendent that he had not passed the test and requested that he be assigned to teach in his area of certification, elementary education. The Local Superintendent responded to Appellant by letter stating that all positions in elementary education were filled.

Appellant was notified that the Local Board proposed to terminate his teaching contract based upon two grounds: (1) a reduction in staff due to the loss of students or cancellation

of programs; and (2) a failure to maintain and secure necessary educational training. A hearing on those charges was held by a Hearing Tribunal (hereinafter "Tribunal") of the Professional Practices Commission on September 27, 1985. During the hearing, the Superintendent for the Local Board testified that Appellant was eligible for the probationary accelerated in-field certificate for five years but had only received the certificate for four years. On cross-examination, the Superintendent testified that he could have requested an emergency certificate for Appellant to continue for the fifth year but did not do so because of the reduction in force and, in fact, he had not filled that position. The Superintendent further testified that, after he received the letter from Appellant requesting to be assigned to his area of certification, he hired five teachers in areas for which Appellant was certified: (1) a teacher with a T-4 certificate with zero years of experience teaching in the Local System and zero years of experience teaching outside the system to teach in a self-contained second grade class; (2) a teacher with a T-5 certificate with zero years of experience in the Local System and one year experience outside the Local System to teach a second grade self-contained class; (3) a teacher with a T-4 certificate, with zero years experience in the Local System and eleven years experience outside the Local System to teach chapter one eligible children; (4) a teacher with a T-5 certificate with zero years experience in the Local System and eleven years experience outside the Local System to teach a second grade self-contained class;

and (5) a teacher with a T-4 certificate and with zero years of experience in the Local System to teach a seventh grade social studies class and be a coach.

Appellant contended that he had voluntarily taken the special education class four years earlier to assist the school system, he had taken courses in special education in the summers, and his failure to pass the test should not keep him from being hired in the area of his certification.

The Tribunal found that Appellant's failure to pass the test constituted failure to maintain and secure necessary educational training, but that the Local Board had not proved that Appellant's contract should be terminated due to a reduction in staff due to the loss of students or the cancellation of programs. The Tribunal recommended that Appellant's contract be terminated based upon its finding that Appellant had failed to maintain and secure necessary educational training.

On November 7, 1985, the Local Board met to consider the Tribunal's recommendations and voted to terminate Appellant's contract. It is from that decision this appeal was filed.

PART III

DISCUSSION

Appellant contends on appeal that the decision of the Tribunal failed to address the issue of Appellant's life certificate and, therefore, the finding that Appellant did not hold a valid teaching certificate was clearly erroneous.

The Local Board contends that Appellant's failure to pass the test clearly demonstrates a failure to secure and maintain necessary educational training.

Appellant was a tenured¹ employee, and thus, the burden at the hearing was on the Local Board to demonstrate that facts existed to support one of the statutory grounds under O.C.G.A. §20-2-940 for termination or nonrenewal.² The Local Board clearly proved Appellant did not pass the test. The Local Board did not attempt to prove that Appellant had, in any other way, failed to secure and maintain necessary educational training. The Local Board did not dispute that Appellant had taken summer courses to teach Special Education classes. The Local Board did attempt to argue that Appellant did not know certain information regarding elementary school students and had not taught other classes in a long time but that would not prove he had failed to secure and maintain necessary educational training. These contentions might show incompetence but, since incompetence was not charged, these contentions are irrelevant to this case.

¹ After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure."

² One could argue that the 1985-86 contract was void by its terms because it was conditional on Appellant's passing the test, and, thus, this is really a nonrenewal case. However, that distinction would not make a difference because, in either instance, the same grounds must be proved.

The Local Board did prove that Appellant failed to pass the test, but this still raises the question of whether failure to pass the test constituted a failure on behalf of the Appellant to secure and maintain necessary educational training. The word "necessary" is included in the statutory ground for termination. The statute does not allow for termination based upon failure to secure and maintain all educational training but only that educational training which is necessary. A previous decision of the State Board of Education has held that failure to pass the test which results in a teacher's having no valid certificate constitutes failure to secure and maintain necessary educational training. Carlyle v. The Board Of Public Education For The City Of Savannah And The County of Chatham, Case No. 1981-11. However, the facts of the instant case differ in that the Local Board has not demonstrated that passing the test was necessary for Appellant to continue to teach in a field for which he was certified. Appellant showed he had the certification necessary to teach in grades 1-8 and could have taught in several positions which were available. The contract signed by Appellant is a typical State form contract in which a teacher is hired to teach in the system wherever the teacher is assigned by the Local Board. The contract contained the requirement that Appellant pass the test but that provision cannot override Appellant's statutory right to an unconditionally renewed contract for the 1985-86 school year absent proof of the statutory grounds for nonrenewal. Here,

the Local Board proved Appellant did not pass the test, but it did not present any evidence to support a position that passing the test was necessary educational training for Appellant. While passing the test was necessary for Appellant to receive a permanent certificate to qualify to teach the mentally handicapped, it was not necessary, according to the testimony of the Superintendent, for Appellant to receive an emergency certificate to teach the mentally handicapped, or for Appellant to teach under his current elementary certificate.

The Local System also attempted to prove at the hearing that the Appellant was nonrenewed due to a loss of students or cancellation of programs. The Tribunal found that Appellant did not prove this charge and by relying on the recommendation of the Tribunal in its decision, the Local Board apparently accepted that finding. The Hearing Officer concurs with the finding that the Local System did not meet its burden of proving that a loss of students or cancellation of program occurred. The Local Superintendent clearly stated that the program Appellant was teaching had not been cancelled.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that, under the facts of this case, the Local

Board did not prove either that Appellant failed to secure and maintain necessary educational training, or that a loss of students or cancellation of programs occurred. The Hearing Officer, therefore, recommends the decision of the Local Board be

REVERSED.

L. O. Buckland

L. O. BUCKLAND
STATE HEARING OFFICER