

1. That Appellant was directed to present her averaged grades for each grading period to the principal for review prior to issuing the grades to the students, and that Appellant failed to comply with this directive;
2. That the principal found numerous discrepancies in Appellant's averaging of her student's grades and that, upon Appellant's reaveraging the grades, she arrived at a different grade for each student; that the principal reaveraged the grades and found numerous instances of error on her part, including instances where students were given a grade of 110%, and other instances where Appellant ignored a zero and other grades which had been given to her students.
3. That Appellant was directed not to discipline students by having them stand in the hail and not to send students to the office without having completed discipline forms, and she failed to comply with these directives.
4. That the principal's secretary delivered a directive from the principal that Appellant come to his office for a conference, but Appellant failed to comply.
5. That the principal observed Appellant's classroom on February 20, 1986, and Appellant showed a video which did not relate to the time period of the subject matter being taught, which was in violation of instructions given at the faculty meeting at the beginning of the school year.

At the hearing, some of the testimony presented, and objected to by Appellant, related to events which occurred after the April 14 notice of nonrenewal. The testimony showed that the situation which arose concerning Appellant's disciplining students by having them stand in the hail and the situation which arose concerning students being sent to the office without completed disciplinary forms (listed as number three above) arose after the April 14, 1986 notice. Additionally, the testimony showed the situation which arose concerning the allegation that the teacher had not responded to a directive delivered by the principal's office to appear for a conference with him (listed as number four above) arose after the April 14, 1986 notice. At the end of the hearing, the hearing officer who made the rulings for the Local Board ruled that Appellant's motion to strike testimony concerning April 16 and 17 was sustained.

The Local Board failed to reach a decision at the end of the hearing, and voted to reconvene on June 19, 1986 to decide the matter. The record does not reflect the actual

decision, but the notice of appeal states the decision to nonrenew Appellant's contract was reached on June 19, 1986.

Appellant's attorney's certificate of service shows Appellant filed this appeal, by hand, on Monday, July 21, 1986. The Local Superintendent acknowledged receipt of service in his office thirty-one days after the date of the hearing.

PART III

DISCUSSION

Appellant contends on appeal that the only evidence of incompetence presented relates to the fact that Appellant misaveraged her student's grades, which evidence is insufficient to support the allegation that Appellant is incompetent. Appellant contends that an error in averaging grades is, as a matter of law, insufficient to amount to incompetence. She contends this is especially so when the evidence presented, including the principal's observations and written evaluations, showed her to be competent, and no remediation was attempted or given regarding her averaging of grades.

Appellant contends the only allegations of insubordination presented were, first, that the film she showed did not relate to the subject matter being taught, second, that she failed to show her grades to the principal before posting them, and third, that she disobeyed certain commands after she had received the notice for non-renewal, and that such allegations do not support the charge of insubordination. She contends the film she showed depicted the life of slaves in Georgia, that she was discussing integration and segregation during the period between World War I and World War II, and it was Black History Month. She contends that the study of history by considering and relating events of different periods is sound and that it was appropriate to show such a film anyway, since the state and county had given directives to incorporate black history into the curriculum.

She contends that the failure to show her grades to the principal before posting them was not insubordination. It is her position the facts show she had been ill at home, the principal requested Appellant to come in to school and post the grades, the principal did not mention to Appellant again that she was supposed to show him the grades before she posted them, and she tried to find the principal but could not. Appellant contends the remainder of the evidence presented to support the charge of insubordination relates to the period of time subsequent to the time the nonrenewal decision was made, and is therefore inadmissible.

The Local Board contends that, under the “any evidence rule”, the evidence supported their decision.

The charge of insubordination against Appellant was not supported by the evidence presented. First, the hearing officer below was correct in ruling that only matters relating to the time period prior to April 14, 1986, the date of the nonrenewal notice, should have been considered. By operation of law, teaching contracts are either renewed or nonrenewed each year, based upon the April 15 deadline provided for in O.C.G.A. §20-2-942. This case is based upon the nonrenewal of the Appellant, for cause, prior to April 15, 1986. Thus, any matter which arose after April 15, 1986, cannot be brought up to prevent her contract from being renewed.

Because only matters arising prior to April 15, 1986 can be considered, the only evidence tending to support the charge of insubordination relates, first, to the showing of the video, and, second, to Appellant’s failure to show her grades to the principal before posting them. In order for an act to constitute insubordination, some intent to disregard the orders of a superior must be shown on the part of the person who is alleged to be insubordinate. Mere negligence or error does not constitute insubordination. Likewise,

violation of the orders of a superior based upon a legitimate misunderstanding of the nature of the orders does not constitute insubordination. In the present case, no evidence was presented from which one could conclude the showing of the video, or the posting of the grades without allowing the preview by the principal, was intended to be in disregard of the orders of the principal. The directive concerning the video was that videos were not to be shown unless they were reflective of the subject matter being taught in class at that particular time. Appellant's argument that the video, concerning slavery, did relate to the study of integration and segregation during the period between World War I and World War II has merit. Additionally, the worst that could be said, if one takes the principal's point of view that the video was unrelated to the subject matter being taught, is that Appellant committed an error in judgment in believing the video was related to the subject of study. Certainly this does not constitute a willful disregard of the principal's orders. The directive concerning the posting of the grades also does not present a case *for* insubordination. The directive to allow the principal to review the grades before they were posted was given to Appellant at the beginning of the year. Subsequently, after the second nine week grading period was over, Appellant was at home ill when she was called and directed to come in and post her grades. The uncontradicted testimony was that Appellant attempted to find the principal to show him the grades but she could not find him. Faced with the directive to come into school and post the grades, she complied. Her actions in that regard hardly constitute an intentional disregard of the orders of her superior.

The charge of incompetence also was not supported by the evidence presented. Incompetence denotes the lack of ability, legal qualification, or fitness to discharge the required duty. See, Blacks Law Dictionary, 906 (4th Ed. 1968.) In the present case, Appellant failed to average her students' grades properly for one nine week period. The testimony presented created questions as to why the misaveraging occurred, but it did not

show that Appellant lacked the ability to average grades. It simply showed that an error had been made, that there was some question as to whether Appellant intended to count all zero scores in the averaging process, and that there was some question as to whether grades above one hundred were correctly counted. As was stated by Judge Benham, writing for the Georgia Court of Appeals in Terry v. Houston County Board of Education, 178 Ga. App. 296, 299, "We deal here with a teacher who has simply been negligent, a condition not unknown to human beings."

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Board of Education concludes that the appeal was timely filed and that there was no evidence to support the decision of the Local Board that Appellant was incompetent or insubordinate. The decision of the Local Board is, therefore,

REVERSED.

This 12th day of February, 1987.

Mr. Foster and Mr. Lathem voted no.

LARRY A. FOSTER
Vice Chairman for Appeals