

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>YVONNE BELSER,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1991-2</b>
	:	
v.	:	
	:	<b>DECISION</b>
<b>ATLANTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is an appeal by Yvonne Belser (“Appellant”) from a decision by the Atlanta City Board of Education (“Local Board”) not to renew her teaching contract for the 1990-1991 school year. The Local Board’s decision is sustained.

**PART II**

**FACTUAL BACKGROUND**

Appellant taught for the Local Board since 1969. During the 1983—1984 school year, Appellant was assigned to Tull Waters Elementary School as a seventh grade teacher. She requested a transfer to East Lake Elementary School in order to be closer to her home. At the beginning of the 1984-1985 school year, Appellant was assigned to East Lake Elementary as a first grade teacher in the Chapter I program.

While Appellant served in the Chapter I program, she had very little responsibility for classroom planning and lesson organization because she worked closely with a strong lead teacher. During Appellant’s three years of service as a Chapter I teacher at East Lake Elementary, she had numerous conflicts with other teachers on the staff. As a result of these conflicts, some of the other teachers on the staff refused to send their students to Appellant’s

Chapter I program and the number of students that Appellant taught declined significantly. With the loss of students, Appellant was assigned to teach a regular second grade class beginning with the 1987-1988 school year.

Appellant taught a regular second grade class at East Lake Elementary School for three years. Appellant's principal and the area resource teacher observed several deficiencies in Appellant's teaching performance. Appellant's deficiencies included negative comments toward her students, incomplete and inadequate lesson plans for her classroom, and failure to follow the lesson plans which were prepared. Appellant also maintained a cluttered, disorganized classroom.

During the 1987-1988 school year, after the above teaching deficiencies were noted, the principal offered Appellant numerous items of assistance, including placing Appellant on a professional development plan in an effort to raise her teaching performance to a satisfactory level. These items of assistance included hiring a veteran teacher to assist Appellant in her classroom by offering critical comments, providing demonstration lessons to Appellant's students and consulting with Appellant regarding suggestions for improving her teaching performance. The area resource teacher also gave Appellant assistance by visiting her class regularly, observing Appellant's teaching performance and then giving Appellant a written memorandum noting her observations as well as recommendations for alternative techniques which might be employed by Appellant.

During the 1989-1990 school year, the Principal and the area resource teacher monitored Appellant's progress under her professional development plan and concluded that she failed to achieve the objectives of her plan and her teaching performance remained below an acceptable level. In addition, the principal found that Appellant was unwilling to cooperate in improving the learning environment in her classroom. Specifically, Appellant refused to participate in a program developed by the principal to help improve students' reading skills. Appellant also

refused to meet with the principal to discuss her deficiencies and failed to turn in class schedules that the principal requested.

Prior to April 15, 1990, Appellant was given notice by the Local Superintendent that he would not recommend renewal of her teaching contract for the 1990-1991 school year. Appellant made a timely request for reasons and a hearing before the Local Board.

On May 3, 1990, the Local Superintendent gave Appellant written notice of the reasons for non-renewal and notice of the hearing on the charges. Appellant was charged with incompetence, willful neglect of duties, insubordination, and other good and sufficient causes.

on June 13, 1990, a hearing was held before a hearing tribunal that consisted of four members of the Local Board. The tribunal concluded that good and sufficient cause existed to justify the non-renewal of Appellant's teaching contract for the 1990-1991 school year. On August 22, 1990, the Local Board accepted the tribunal's report and adopted the recommendation not to renew Appellant contract. Appellant then filed this appeal to the State Board of Education.

### PART III

### DISCUSSION

Appellant claims on appeal that she was not provided the necessary assistance to alleviate noted deficiencies in her performance and that the evidence presented before the hearing tribunal was insufficient to support the charges against her. As a result, Appellant maintains that the Local Board's decision should be reversed.

The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand

unless there has been an abuse of discretion, or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11.

The first charge against Appellant was incompetence in connection with the performance of her teaching duties. Appellant<sup>1</sup>'s principal observed Appellant regularly and found that Appellant did not follow her lesson plans. For example, during one observation the lesson plan indicated that English, reading, and writing were to be taught during a two-hour period but the only subject that Appellant covered was spelling. In addition, the principal found that Appellant did not include social studies and science in her lesson plans even though they were subjects required in the curriculum. Appellant's principal attempted to help Appellant by hiring another teacher to assist Appellant in the classroom for seven days. The teacher showed Appellant how to establish positive classroom management and prepare lesson plans. The principal also placed Appellant on a three-year professional development plan. The plan focused on four areas: writing lesson plans, increasing student time on task, improving the physical appearance of her classroom, and performance of community and administrative tasks. The principal testified that even with these forms of assistance, Appellant failed to improve her teaching performance.

The area resource teacher observed Appellant several times as part of the professional development plan. The area resource teacher observed that Appellant's lesson plans were incomplete, that Appellant was unprepared for the lessons she was teaching, and that Appellant failed to follow her class schedule. The area resource teacher also took Appellant on a field trip to observe effective teaching practices in another school. Despite this assistance, the area resource teacher found that Appellant continued to work unsatisfactorily. Based upon this evidence, the State Board of Education concludes that there was evidence upon which the Local Board could conclude that Appellant was incompetent.

Evidence was also presented that Appellant refused to participate in programs that the

principal implemented in an effort to improve the learning environment of the students. The other teachers in the school participated in the program. Appellant also refused to meet with her principal and failed to turn in class schedules that the principal requested. The State Board, therefore, concludes that there was evidence before the hearing tribunal from which the tribunal and the Local Board could conclude that Appellant was insubordinate.

Appellant next argues that she was not provided the necessary assistance to alleviate her deficiencies. As noted above, Appellant was given considerable assistance over an extended period of time. Appellant, however, was unable to improve her performance even with the assistance. The State Board of Education concludes that there is no basis for Appellant's argument that she was not provided with assistance.

Appellant also contends that she was denied due process because the hearing was held before a tribunal rather than the full membership of the Local Board or before the Professional Practices Commission as she requested. Additionally, Appellant claims that there was no showing that the members of the tribunal had any educational expertise. O.C.G.A. § 20-2-1160(e) provides that the State Board of Education shall not consider any question de novo and the review by the State Board of Education will be confined to the record. If an issue is not raised at the initial hearing, it cannot be raised for the first time when an appeal is made. Hutcheson v. DeKalb Cnty. Bd. of Ed., Case No. 1980-5 (St. Bd. of Ed.). Appellant's objection to the sufficiency of the tribunal or its educational expertise is not contained in the record. At the start of the hearing, the chairperson of the tribunal stated that it was a tribunal composed to conduct the hearing. He then asked if Appellant had any technical matters that needed to be discussed. Appellant did not raise any objections to the composition of the tribunal at that time, nor at any time during the hearing. The State Board of Education has previously held that objections to the composition of the hearing tribunal should be raised at the time of the hearing and the failure to do so constitutes a waiver of such objections. Woods v. Atlanta Bd. of Educ., Case No. 1977-11 (St. Bd. of Ed.).

Appellant argues that the issues were raised before the hearing because a request was sent to the Local Superintendent for the hearing to be held before the Professional Practices Commission and for the appointment of a hearing officer. The request was not answered. A mere request for a hearing to be held in a particular manner does not amount to raising an objection to the composition of the tribunal. The Local Board was not put on notice that the tribunal was objectionable. The State Board of Education concludes that the issues were not raised at the hearing below and cannot now be raised.

Appellant also argues that she was denied due process because the Local Board failed to appoint a hearing officer as she requested. O.C.G.A. § 20-2-940(e) provides that all questions relating to the admissibility of evidence or other legal matters shall be decided by the chairman or presiding officer at the hearing. The only time a hearing officer is discussed. Appellant did not raise any objections to the composition of the tribunal at that time, nor at any time during the hearing. The State Board of Education has previously held that objections to the composition of the hearing tribunal should be raised at the time of the hearing and the failure to do so constitutes a waiver of such objections. Woods v. Atlanta Bd. of Educ., Case No. 1977-11 (St. Bd. of Ed.).

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relating to the admissibility of evidence or other legal matters shall be decided by the chairman or presiding officer at the hearing. The only time a hearing officer is to decide such questions is if the parties agree that a disinterested member of the State Bar of Georgia will serve as a hearing officer. In this case, there was no agreement concerning the appointment of a hearing officer. By statute, the chairperson was required to decide questions of admissibility. Appellant claims that she was denied due process because the lay chairperson permitted irrelevant material into evidence. The transcript, however, reflects only one evidentiary objection, which appeared to be dropped after opposing counsel stated the reasons for the line of questioning. The State Board of Education concludes that Appellant was not denied due process because the hearing was held before the tribunal without a hearing officer being appointed.

#### PART IV

#### DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence to establish that Appellant was incompetent and insubordinate, and that Appellant was not denied any due process rights. The Local Board's decision not to renew her teaching contract is, therefore, hereby

SUSTAINED.

This 14<sup>th</sup> of March, 1991.

Larry A. Foster  
Vice Chairman for Appeals