STATE BOARD OF EDUCATION

STATE OF GEORGIA

MARGARET HANSON,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1994-53**
vs.	:	
	:	**DECISION**
BUFORD CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

PART I
SUMMARY

This is an appeal by Margaret Hanson (Appellant) from a decision by the Buford City Board of Education (Local Board) not to renew her teaching contract because of insubordination, willful neglect of duty, and incompetence based upon her failure to follow proper procedures in testing children for admittance to the gifted program. Appellant claims she did not disobey any instructions from her principal and did not fail to follow the proper procedures to test children. Additionally, Appellant claims she was denied due process because the Local Board conducted a hearing on her non-renewal without affording her any of the evaluation procedures provided for in O.C.G.A. § 20-2-210 et seq. The Local Board's decision is sustained.

PART II
FACTUAL BACKGROUND

Appellant was employed by the Local Board in 1987 as a physical education teacher. She was later also placed in charge of the gifted program at the Buford Elementary School. During 1990 and 1991, Appellant was selected as Teacher of the Year. At the beginning of the 1993-1994 school year, a new principal was installed at Buford Elementary School.

In January, 1994, the principal called Appellant to his office to question why there were a large number of students being processed for the gifted program. The principal then asked Appellant what procedures she used when a student was borderline. Appellant explained that she often retested the student if the student only missed one or two questions since the testing environment was distracting because people frequently entered the testing area and the air conditioning fan created a substantial amount of noise. If the students were able to answer the questions they missed, Appellant then processed them for entry into the gifted program. The principal pointed out to Appellant that state regulations do not permit a student to be retested with the same test; a student has to take a different test. He then directed Appellant not to retest any more students as she had been doing.

In March, 1994, Appellant tested a kindergarten student who was the daughter of a good friend and teacher. Appellant testified that the student was a textbook gifted child. The student, nonetheless, missed three questions out of the sixty questions on the test, which resulted in her being disqualified for the gifted program.

Appellant informed the student's kindergarten teacher that the student had not qualified. Although there was some dispute about whether Appellant suggested retesting the student, or whether the kindergarten teacher asked if something could be done, Appellant made arrangements with the student's teacher to retest the student. Appellant also asked the student's teacher not to tell anyone, especially the principal because he did not approve of any retesting.

The student's teacher, however, was concerned about keeping the matter secret and she went to the principal and explained what was being planned. The principal informed the Local Superintendent. Two weeks later, Appellant retested the student after school hours by showing the student the three questions she had missed and asking her what were the correct answers. The student was able to answer one of the questions correctly, which would have qualified her for the gifted program if she had correctly answered the question during the first testing. The student's teacher told the principal that Appellant had retested the student.

Appellant prepared a letter to the student's parent that said the student had qualified for the gifted program. Appellant took the letter to the office to have it copied. After the letter was copied, the principal took it out of Appellant's mailbox and placed it in his office. Appellant became concerned when she did not find the copy in her mailbox and she asked several people whether they had seen the letter. She then learned that the principal had retrieved the letter from her mailbox. The next day, Appellant met with the principal. She admitted she had retested the student, but said she was going to talk with the principal about the circumstances surrounding the testing of the student. She also claimed that she retested the student so she would have more information to give the school psychologist to see if further testing was warranted. Later that day, the principal had a letter of charges prepared to notify Appellant that a recommendation to renew her contract would not be made because of insubordination, incompetence, and willful neglect of duty.

Appellant requested a hearing before the Local Board. The Local Board voted not to renew Appellant's contract and she then appealed to the State Board of Education.

PART III
DISCUSSION

On appeal, Appellant claims the Local Board failed to follow the provisions of the Fair Dismissal Act, O.C.G.A. § 20-2-940, et seq., because the principal made the recommendation not to renew her rather than the Local Superintendent. Appellant argues that the process provided in the Fair Dismissal Act is designed to provide an independent review by a local superintendent to avoid rash judgments and eliminate personality differences. Appellant then argues that she was denied this objective process because the principal prepared the letter of charges.

The record, however, shows that the Local Superintendent was fully aware of the circumstances and approved the decision to recommend against renewing Appellant's contract. The Fair Dismissal Act does not require a local superintendent to make a separate investigation before recommending against the renewal of a teacher's contract. Even though the principal prepared the charge letter, the Local Superintendent approved the decision not to recommend renewal and presented the recommendation to the Local Board. The State Board of Education, therefore, concludes that Appellant was not denied due process because the principal prepared the letter of charges rather than the Local Superintendent.

Appellant next contends the Local Board denied her due process because she was not provided a pre-termination hearing and was not given the benefit of an evaluation as provided in O.C.G.A. § 20-2-210. Appellant argues that the decision in Cleveland Board of Education v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985) requires a pre-termination hearing. In the instant case, however, Appellant was provided a pre-termination hearing before the Local Board. She was not deprived of any property interest before her hearing took place. Only a recommendation of non-renewal existed before the Local Board hearing was held. Loudermill only requires a pre-termination hearing, not a separate hearing before the case for non-renewal is presented to a local board. We, therefore, conclude that the Local Board provided Appellant all the process she is due under Loudermill.

We have previously held that O.C.G.A. § 20-2-210 does not create any additional substantive or procedural rights for a teacher. See. e.g., Main v. Greene Cnty. Bd. of Educ., Case No. 1991-9 (Ga. SBE, April 11, 1991). Appellant now asks the State Board of Education to overrule its previous decisions. Appellant argues that since Loudermill requires a pre-termination hearing, a teacher should receive an evaluation and an opportunity to correct any deficiencies before a non-renewal hearing is held. Appellant's arguments, however, are not convincing. It remains our view that O.C.G.A. § 20-2-210 does not provide a teacher with any additional procedural or substantive rights, but, instead, is designed to assist teachers in improving their performance.

Appellant also claims on appeal that there was no evidence that she was insubordinate because there was no evidence that she failed to follow the principal's directive, or that she violated any state regulations regarding retesting since she did not recommend to the principal that the student be admitted to the gifted program. She also claims that there was no evidence that she was incompetent. "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, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976) ." Roderick J. v. Hart Cnty. Bd. of Educ., Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

The record shows that the principal directed Appellant not to retest any students by giving them the same test. Appellant admitted the conversation, but testified that she understood the directive to mean she was not to recommend students to the gifted program based upon a retest. Appellant's actions in attempting to keep the fact of retesting from the principal until she became aware he had discovered the retesting, and her preparation of a letter to the student's parent that the student was qualified for the gifted program indicate that she both understood the principal's directive and attempted to avoid his instructions. We, therefore, conclude that there was evidence available to the Local Board to support its decision not to renew Appellant's contract.

Willful neglect of duty involves "a flagrant act or omission, intentional violation of a known rule or policy, or a continuous course of reprehensible conduct." Terry v. Houston County Bd. of Ed., 178 Ga. App. 296, 299 (1986). Here, Appellant was made aware of the rule that she was not to retest the students with the same test, but she nevertheless proceeded to retest the student with the same test. We, therefore, conclude that there was evidence to support the Local Board's decision not to renew Appellant's contract based upon willful neglect of duty.

Incompetence involves the inability to perform in the position in which the teacher is working. In this case, there was no evidence that Appellant was unable to perform her duties as a physical education teacher or as head of the gifted program. The Local Board argues that the

failure to follow instructions shows incompetence. The failure to follow instruction, however, falls more in the category of insubordination rather than incompetence. There was no showing that Appellant was unable to perform her duties. Instead, the Local Board has only shown that she refused to follow the instructions given by her principal.

PART IV
DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board did not deny Appellant due process and there was evidence to support the Local Board's decision not to renew Appellant's contract. Accordingly, the Local Board's decision is SUSTAINED.

This 8th day of September, 1994.

Messrs. McGlamery, Sessoms and Williams were not present.

Robert M. Brinson
Vice Chairman for Appeals