STATE BOARD OF EDUCATION

STATE OF GEORGIA

JUDY JOHNSON,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1996-44**
vs.	:	
	:	**DECISION**
PULASKI COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Judy Johnson (Appellant) from a decision by the Pulaski County Board of Education (Local Board) to demote her from her position as principal of the Pulaski County Middle School based upon charges of incompetency, insubordination, willful neglect of duties, and other good and sufficient causes as set forth in O.C.G.A. § 20-2-940 in that she was unable to maintain discipline in the middle school, failed to lead and adequately supervise the staff of the middle school, and used inappropriate judgment in a number of instances. Appellant claims that the Local Board's decision should be reversed because (1) the Local Board's charges failed to comply with the O.C.G.A. § 20-2-940 since they were not specific enough for her to show any error, and (2) the Local Board's chairman should have recused himself because he was biased against her, as shown by his previous attempt to have Appellant's contract not renewed. The Local Board's decision is reversed.

Appellant was serving as the principal of the Pulaski County Middle School, where she had served for five years without receiving any negative evaluations. The Local Superintendent, who became superintendent in August, 1995, was dissatisfied with the level of discipline maintained at the middle school and had conferences with Appellant during the 1995-1996 school year. On April 3, 1996, the Local Superintendent notified Appellant that he would not recommend renewal of her contract for the 1996-1997 school year.

In response to Appellant's request for a hearing and notice of charges, the Local Superintendent, through counsel, notified Appellant that he would not recommend renewal of her contract because of insubordination, incompetence, willful neglect of duty, and other good and sufficient cause. The letters then set forth

some specific incidents, many of which were couched in general terms. At the beginning of the hearing, which was held on June 11-12, 1996, Appellant moved to strike several of the general charges. Appellant's motion was denied by the Local Board. In addition, Appellant attempted to get the chairman of the Local Board to recuse himself because he had been involved in an incident with Appellant where Appellant refused to change the discipline of a student and the chairman vowed that Appellant had not heard the last from him. The chairman refused to recuse himself. After the hearing, the Local Board voted not to renew Appellant's contract as a principal, but offered her a teaching position.

When the hearing started before the Local Board, Appellant was denied an opportunity to question the chairman and had to resort to a proffer of proof. On appeal, Appellant claims that the Local Board's decision should be reversed because the chairman did not recuse himself.

In *Garrett v. Atkinson Cnty. Bd. of Educ.*, Case No. 1980-21 (Ga. SBE, Nov. 13, 1980), the State Board of Education held that the failure of a member of the local board to recuse himself when his wife was the chief witness against the teacher resulted in the teacher being denied due process. We believe the same principles apply in the instant case. According to Appellant's proffer, the chairman had involved himself in Appellant's continued employment to such an extent that he should have recused himself when the issue was raised by Appellant. His failure to do so denied Appellant due process.

Appellant also claims that the charges against her were not drawn with enough specificity to fairly allow her to show error. O.C.G.A. § 20-2-940(b)(1) and (2) require a local board to give notice of the cause for discharge or demotion "in sufficient detail to enable ... [the principal] fairly to show any error that may exist therein ...." and "[t]he names of the known witnesses and a concise summary of the evidence to be used against ... [the principal] ...." "The test to be applied is whether the notice permits the person charged to establish a defense without the benefit of any discovery. The State Board of Education has previously ruled that the notice does not have to contain specific dates, times, places, and people involved when the teacher has been previously warned during conferences about improper actions. *Morton v. Griffin-Spalding Cnty. Bd. of Educ.*, Case No. 1985-49 (Ga. SBE, Feb. 13, 1986), and when the notice was accompanied by a corrective action plan and letters that detailed the teacher's deficiencies, *Barfield v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1984-8 (Ga. SBE, Sep. 13, 1984). In each case, the State Board of Education looked to see if the teacher or principal was able to present a defense against the charges." *Haire v. Talbot Cnty. Bd. of Educ.*, Case No. 1993-12 (Ga. SBE, Aug. 12, 1993). "While it is important that charges be drawn as specifically as possible, non-

renewal proceedings are administrative and not criminal, and, therefore, do not require the specificity of a criminal proceeding." *Smith v. Bryan Cnty. Bd. of Educ.*, Case No. 1987-24 (Ga. SBE, 1987)(prior written evaluations gave notice). In connection with student disciplinary hearings, the State Board of Education has stated, "One of the main reasons for requiring notice is to permit the accused to prepare a defense. To prepare a defense, the accused needs to know the rule or rules allegedly violated, the date, time, and place the offense occurred, and the act or actions that result in an offense to the rule or rules. The amount of information needed to prepare a defense depends on the specificity of the rule involved." *Damon P. v. Cobb Cnty. Bd. of Educ.*, Case No. 1993-9 (Ga. SBE, May 13, 1993). As indicated in *Dowling v. Atlanta City Bd. of Educ.*, Case No. 1993-14 (Ga. SBE, Jul 8, 1993), the notice should let the employee know who, what, where, and when about each incident which is to serve as the basis for the charges.

The charges prepared in the instant case were broadly drawn and did not let Appellant fairly prepare to defend against them. For example, one of the charges was that there was chaos in the middle school and a lack of discipline. When one of the witnesses began testifying about parents transferring their children out of the district, Appellant's counsel objected because there was nothing in the charge letter about any problem of children transferring out of the district because of discipline problems. Additionally, there was no mention that the witness would be testifying about such a situation. Appellant's objection was overruled because it related to showing that there was chaos in the middle school.

The charges gave a list of witnesses, but did not identify what they would be testifying about. In addition, many of the charges did not identify who was involved and the dates the events occurred when that information was necessary to present an effective defense.

Although there were also some charges that were specific enough in the circumstances to permit Appellant to present a defense, it is impossible to tell what effect the evidence of the deficient charges had on the Local Board. Appellant continually raised objections based on the lack of knowledge that witnesses would be testifying about specific incidents that were not mentioned in the charge letter. The objections, however, were regularly overruled. We need not, however, detail all the charges because of our conclusion that Appellant was denied due process when the chairman failed to recuse himself.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant was denied due process because the chairman of the local board failed

to recuse himself when asked because he had a direct interest in Appellant's continued employment. The Local Board's decision, therefore, is REVERSED.

This ____ day of November, 1996.

J. T. Williams, Jr.
State Board of Education