SATE BOARD OF EDUCATION

STATE OF GEORGIA

DEBRA WILLIAMS,	:	
	:	
Appellant,	:	
	:	
	:	**CASE NO. 1997-51**
	:	
ATLANTA	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
	:	
Appellee.	:	

This is an appeal by Debra Williams (Appellant) from a decision by the Atlanta Board of Education (Local Board) not to renew her teaching contract because of insubordination, incompetence and other good and sufficient cause under O.C.G.A. § 20-2-940. The Local Board found that Appellant continued to use profanity in her classroom after being directed not to use profanity. Appellant claims that the evidence was insufficient to sustain the charges, that the Local Board failed to hold a timely hearing, that evidence was tampered with, that fraudulent testimony was admitted, and other claims. The Local Board's decision is sustained.

Appellant taught for the Local Board for more than four years. During the 1995-1996 school year, Appellant was employed at the Sylvan Hills Middle School as an art teacher for the sixth, seventh, and eighth grades. In November 1996, a parent complained that Appellant had made sexually suggestive remarks to the parent's child and had used the words "bitch," "whore," and "hell." Appellant denied that she had made any sexually suggestive remarks and said that the student had taken her remarks out of context. She admitted using the term "bitch," but claimed that she was explaining to her students that they needed to be careful in their use of words and should look up their meaning in the dictionary before using them. Appellant had previously been warned about using profanity in the classroom and had been assigned three professional development plans relating to the use of profanity in the classroom. Because of the November 1996 incident, Appellant's principal recommended termination of Appellant's teaching contract.

Appellant entered negotiations with administration personnel in an effort to keep her job. On December 6, 1996, Appellant signed a waiver and consent agreement, in which she agreed, because of unprofessional conduct in her classroom instructional activities, to a thirty-day suspension without pay. On December 9, 1996, the Local Superintendent wrote to Appellant that he would accept the recommendation of a thirty day suspension and direct the preparation of a professional development plan to address the unprofessional conduct in classroom instructional activities unless Appellant wanted to retract her waiver. On December 12, 1996, Appellant

wrote that she wanted to retract her waiver and proceed with a hearing before the Local Board. Appellant's retraction was received at the start of a two-week holiday and she was not ordered back to school at the end of the holidays. Although she did not begin teaching again until January 31, 1997, the Local Board paid Appellant during the period of absence.

A hearing was scheduled before a tribunal, but when Appellant objected to the tribunal, the hearing was postponed and another hearing was scheduled before the Local Board. Appellant's attorney then asked for another postponement and agreed to a hearing before a tribunal. By then, it was time to renew contracts for the 1997-1998 school year. The Local Superintendent notified Appellant that he would not recommend renewal of her contract. Another hearing date was scheduled when Appellant requested a hearing to address the renewal of her contract.

On the appointed date, Appellant's attorney appeared without Appellant and requested another postponement because Appellant was unable to attend. Over the Local Superintendent's objection, the hearing was postponed until August 27, 1997 and Appellant was informed that there would not be any further postponements of the hearing.

On August 27,1997, Appellant appeared without her attorney, but with a union representative. Appellant asked for another postponement to obtain another attorney since her previous attorney was no longer representing her and that the union attorney had a scheduling conflict. The tribunal denied the request for postponement because of the numerous prior postponements. The hearing then proceeded with Appellant being assisted by the union representative.

During the hearing, the tribunal received evidence that Appellant was placed on professional development plans in 1992 and 1993 because of her use of inappropriate language in the classroom. In May 1995, Appellant was again directed to refrain from making sexually suggestive comments to her students and to avoid the use of any material that might be considered pornographic.

On March 19, 1996, a parent complained about Appellant's use of the words "bitch," "shit," and "hell" in the classroom and making sexually suggestive remarks to the students. Appellant's principal issued a letter of reprimand and directed Appellant not to use any profanity in the classroom and not to make any sexual references or use sexually related materials in teaching the art curriculum.

On November 13, 1996, the principal received another written complaint about Appellant's comments in the classroom. Students testified that Appellant, in addressing the female students in the class, said words to the effect, "You have two choices — you can use your brain, or you will have to open up your legs" while first pointing to her head and then pointing between her legs. In addition, the students testified that Appellant frequently used the words, "hell," "bitch," and "whore" in the classroom.

The tribunal found Appellant guilty of insubordination, incompetence, and unprofessional conduct and recommended against renewing her teaching contract. When the Local Board accepted the tribunal's recommendation, Appellant filed a timely appeal to the State Board of Education.

On appeal, Appellant has raised several objections to the conduct of the tribunal hearing. Her first ground for appeal is that she was denied due process because the tribunal did not grant her request for a continuance to obtain an attorney. 0. C. G. A. §20-2-940(d) provides that a teacher is entitled to representation by counsel. "A motion for continuance is addressed to the sound discretion of the trial court. Absent a showing that it has been abused, that discretion will not be controlled." *Clark v. State,* 159 Ga. App. 438, 283 S.E.2d 666 (1981). In the instant case, the hearing was postponed several times upon Appellant's motion. Appellant was then informed that another continuance would not be granted. Appellant did not move for a continuance until the tribunal had assembled and the witnesses were present. Under these circumstances, the State Board of Education concludes that the tribunal did not abuse its discretion by denying Appellant's request for a continuance.

Appellant also claims that her due process rights were violated because she was punished twice for the same offense since she had already been suspended for thirty days. The record, however, shows that Appellant was not previously punished. She was supposed to serve thirty days without pay during the period from December 6, 1996 through January 31, 1997 and to participate in an employee assistance program and be placed on a professional development plan. Because of an administrative oversight, Appellant did not teach during the December 6 to January 31 period, but she was paid for the period and she did not participate in an employee assistance program or in a professional development plan. The State Board of Education concludes that the Local Board did not previously punish Appellant after she rejected the proposed thirty-day suspension without pay and other disciplinary measures and received pay for the period of absence.

Appellant's next claim is that her First Amendment rights of free speech were violated by the Local Board's decision. Appellant has not cited any case law that supports a right to use profanity in the classroom. A teacher does not have an unlimited right of free speech in the classroom; school administrators can exercise editorial control over the speech that is permitted in the class if the control is "reasonably related to legitimate pedagogical concerns." *Bishop v. Aronov,* 926 F.2d 1066, 1074 (11th Cir. 1991). Restricting a teacher from using the words "bitch," (in reference to females), "whore," and "hell" before sixth, seventh, and eighth grade students when such words are used as profanity appears to be a legitimate pedagogical limitation. The State Board of Education concludes that the Local Board did not deny Appellant any of her First Amendment free speech rights.

Appellant also claims that the testimony before the tribunal was false. The State Board of Education, however, is not in a position to determine the credibility of the witnesses, which is

the duty of the hearing tribunal. Appellant's claim does not provide any basis for the State Board of Education to review the Local Board's credibility determinations. The State Board of Education, therefore, will not disturb the Local Board's decision based on claims of false testimony.

Appellant also claims that the evidence did not support the charges. "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). Appellant claims that her use of various words occurred in the context of explaining to the students why they should not use the words, which she frequently heard in the hallways. Despite her reasons, Appellant was repeatedly warned and disciplined about using profanity in the classroom and the use of the specific words involved. Appellant admitted to the use of the proscribed words even after she had been disciplined. In addition, there was testimony that Appellant made the comments to the female students about using their brains or having to spread their legs. The State Board of Education, therefore, concludes that there was evidence before the Local Board to find that Appellant was insubordinate and exhibited unprofessional conduct.

Appellant also listed several points of law without attempting to show how the points of law were applicable to her case, the conduct of the proceedings, or the Local Board's decision. The State Board of Education will not attempt to construct arguments for Appellant based on abstract points of law. The State Board of Education, therefore, concludes that Appellant's remaining points do not serve any basis for reversing the Local Board's decision.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision not to renew Appellant's contract based on incompetence, insubordination and other good and sufficient cause, and that the Local Board did not deny Appellant any due process rights or First Amendment rights. The Local Board's decision, therefore, is

SUSTAINED.

Mr. Larry Thompson, Vice Chair for Appeals, was not present.

This 12th day of March 1998.

Johnny Isakson, Chairman
State Board of Education