

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JANICE CLEMMONS,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 1998-27
	:	
CHATTOOGA COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION
	:	

Janice Clemmons, Appellant, appeals from a decision by the Chattooga County Board of Education (Local Board) to suspend her without pay for twenty days because she used a photocopy of the Iowa Test of Basic Skills (ITBS) in preparing her students to take the test. Appellant claims that the evidence did not support the decision and that the hearing officer improperly allowed the admission of evidence of a previous disciplinary action. The Local Board's decision is sustained.

At the end of the 1996-1997 school year, Appellant learned that she would be teaching a fifth grade social studies class during the 1997-1998 school year. Before then, she had taught only the fourth grade. At the beginning of the 1997-1998 school year, Appellant received study materials from another fifth grade social studies teacher. Appellant claimed that among the materials was a photocopy of the ITBS.

The ITBS is given once each year during the spring. The Local Board maintains strict control over the tests. During the year, the tests are locked in the central office. The tests are numbered and distributed to the teachers within a day of when the test is given to the students. The teachers do not have any access to the test before it is handed out to give to the students. Immediately after the test is given, the test booklets are accounted for and returned to the central office. The administration also instructed the teachers not to copy the test. Instead, the teachers were provided with sample tests that had similar questions in a format similar to the actual test.

Appellant claimed that she used the photocopy throughout the year to prepare her students for the test because she thought it was one of the study guides. The photocopy did not have any answers provided with it. Appellant researched the answers and circled the correct answers on the photocopy. She then made copies for her students to study in class. When the students took the test, some of them recognized that they had already seen the test and they reported the matter. The test coordinator questioned Appellant and Appellant showed her what

she used to prepare her students. The test coordinator compared the photocopy with the actual test and discovered that they were the same.

The Local Superintendent charged Appellant with incompetence, insubordination, willful neglect of duties, immorality, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. The Local Board conducted a hearing on May 5, 1998. The other social studies teacher testified that she had not given Appellant a copy of the ITBS.¹ At the end of the hearing, the Local Board found Appellant guilty and voted to suspend her without pay for twenty days.² Appellant then filed a timely appeal with the State Board of Education.

On appeal, Appellant contends that there is no evidence to support the Local Board's decision. She claims that, at most, she may have been negligent, but negligence does not support any disciplinary action under O.C.G.A. § 20-2-940.

"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 Local Board argues that there was some evidence to support the decision. The Local Board claims that it could disbelieve Appellant's version of what happened and that she was, or should have been, aware that she had a copy of the actual test.

The Local Board argues that even if the evidence does not show that Appellant knew that she had a copy of the ITBS, her disregard of numerous indicators showed such gross negligence that disciplinary action was warranted. In support of this argument, the Local Board points to the fact that the copy did not have a cover sheet, answer sheet, or instructions. In addition, Appellant had previously administered the ITBS four times, which should have made her familiar with the testing protocols. Based upon these indicators, the Local Board argues that Appellant's conduct was reckless.

It is the duty of the fact finder to weigh the testimony and, if there is a conflict, to decide which testimony to adopt. Here, the Local Board was faced with conflicting testimony whether Appellant knew or should have known whether she had an actual copy of the ITBS. The Local

¹ There was testimony that another teacher admitted to copying the test. The other teacher was disciplined with twenty days suspension without pay. The other teacher was not identified in the record.

² The Local Board did not indicate whether Appellant was guilty of incompetence, insubordination, willful neglect of duties, immorality, or of other good and sufficient cause.

Board opted to believe that Appellant knew that she had a copy of the actual ITBS and the State Board of Education cannot disturb that finding.

Based upon the foregoing, it is the opinion of the State Board of Education that there was some evidence to support the Local Board's decision that Appellant was guilty of incompetence, insubordination, willful neglect of duties, immorality, or that other good and sufficient cause existed to suspend Appellant without pay. Accordingly, the Local Board's decision is SUSTAINED.

This 10th day of September 1998.

Larry Thompson
Vice Chairman for Appeals