

STATE BOARD OF EDUCATION

STATE OF GEORGIA

HUGH HICKS,	:	
Appellant,	:	
v.	:	CASE NO. 1980-30
	:	
DOUGHERTY COUNTY BOARD	:	
OF EDUCATION,	:	
Appellee.	:	

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact of the Hearing Officer are made the Findings of Fact of the State Board of Education and by reference are incorporated herein, and

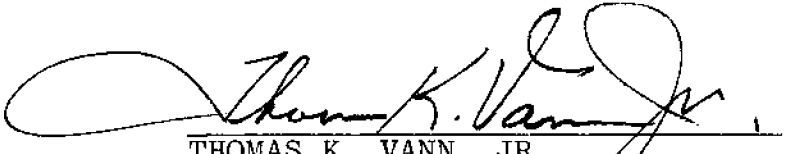
DETERMINES AND ORDERS, that the evidence as a whole does not support the decision of the Dougherty County Board of Education, and

DETERMINES AND ORDERS, that the decision of the Dougherty County Board of Education herein appealed is hereby reversed.

Mssrs. Vann, Smith, and Lathem dissent on the basis the State Board of Education is bound to follow the "any evidence" rule and there is some evidence to support the decision of the Dougherty County Board of Education.

Mr. Stembridge was not present.

This 8th day of January, 1981.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

HUGH HICKS,	:	
	:	
Appellant	:	
	:	CASE NO. 1980-30
vs.	:	
	:	REPORT OF
DOUGHERTY COUNTY BOARD	:	HEARING OFFICER
OF EDUCATION,	:	
	:	
Appellee	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Hugh Hicks (hereinafter "Appellant") from a decision of the Dougherty County Board of Education (hereinafter "Local Board") to terminate his contract as a teacher on the grounds of immorality. The appeal is based on the allegation that the evidence does not support the decision, and Appellant was denied due process because the Local Board did not make findings of fact. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On August 5, 1980 and September 5, 1980, the Local Board held a hearing on the charges made against Appellant

that he had engaged in immoral conduct in having sexual relations with a sixteen year old female student. Appellant had requested the hearing on July 2, 1980, after the student's father had made the charges. On July 11, 1980, a list of charges, the date of the hearing and a list of witnesses was sent to Appellant. The hearing began on August 5, 1980, and was continued until September 5, 1980. The Local Board decided on September 5, 1980 that Appellant was guilty of "immoral conduct in relations you had with a female student sixteen years of age" and terminated his teaching contract effective September 5, 1980.

Appellant had been a teacher and a coach at the high school for six years before the hearing. At some time during 1980, the student accused him of having sexual relations with her on three occasions during October and November, 1979. The Local Board received testimony from the student concerning the times when she met Appellant. The student had also received two cards. On one card was written "I miss you a great deal. Get well soon. Your admirer", and on the other card was written "I really mean it, Yours always". A handwriting analyst testified that the handwriting was Appellant's. Another handwriting analyst wrote a letter which stated that the handwriting appeared to be Appellant's and was not the student's.

Several witnesses testified on behalf of Appellant. The witnesses established that Appellant was not with the student at the times indicated by the student on all of the alleged

dates. One incident allegedly occurred during a homecoming dance when Appellant was chaperoning the dance. Other coaches testified Appellant was never gone from their sight for more than a few minutes. A second incident allegedly occurred between 1:30 o'clock a.m. and 4:30 o'clock a.m. following Appellant's return from scouting the football team of another city. Appellant's wife, however, testified that he arrived home at approximately 1:30 a.m. The third incident allegedly occurred between 5:30 o'clock p.m. and 11:00 o'clock p.m. in another city. The operator of a nursery and Appellant's wife placed him at home during this time period.

The Local Board decided that Appellant was guilty of immoral conduct and terminated his contract. The appeal to the State Board of Education was made on October 1, 1980.

PART III

CONCLUSIONS OF LAW

The appeal raises several issues concerning the conduct of the hearing, the bias of the Local Board, and the sufficiency of the evidence. Specifically, Appellant argues that errors were committed by permitting the chairman of the Local Board to hear the case because he had previous knowledge of the evidence, by failing to permit witnesses to testify as to Appellant's good moral character, by failing to permit Appellant to examine the student's records, by not making findings of fact, and by placing undue weight on the student's testimony in view of the contrary evidence advanced on behalf

of Appellant.

A local board member is not disqualified from hearing a teacher dismissal case because of some prior knowledge of the case. Covlik v. Muscogee County Bd. of Ed., Case No. 1975-11; Kauffman v. Putnam County Bd. of Ed., Case No. 1976-9. Although a motion was made to disqualify the Local Board chairman, there was no evidence of bias on the chairman's part. The Hearing Officer concludes that the Local Board did not err in proceeding with the hearing and permitting the Local Board chairman to remain.

There was considerable testimony concerning Appellant's good character and excellent reputation in the community. A ruling was made that one of the witnesses could not answer a specific question about Appellant's morality, but the witness had previously testified as to Appellant's excellent reputation, good character, and high morality. Other witnesses also made comments in support of Appellant's excellent reputation and high morality. The Hearing Officer concludes that Appellant was not harmed by the ruling that the specific question concerning Appellant's morality could not be answered. There was sufficient evidence in the record to establish Appellant's morality through the testimony that had already been received by the Local Board.

The Local Board did not make any special findings of fact when it made its decision. Appellant argues that the Local Board's failure to make such findings denied him due process of law. The State Board of Education, however, has

previously determined that a local board is not required to make findings of fact in order to support its decision. Wright v. Dodge County Bd. of Ed., Case No. 1978-4; Beard v. Laurens County Bd. of Ed., No. 1977-14. The only decision to make in the case was whether Appellant had any relations with the student. The Local Board concluded that he had. The Hearing Officer, therefore, concludes that the Local Board did not deny Appellant any due process rights by not making findings of fact in support of its decision.

During the hearing, a discussion arose concerning the submission of the student's records to the Local Board. Appellant's counsel initially objected to the Local Board seeing the records, but the objection was then withdrawn and Appellant's counsel stated the Board members should see the records. Appellant now claims error because the records were made available to the Local Board. The Hearing Officer concludes that Appellant cannot now complain of error when he specifically permitted that Local Board to review the student's records.

The final issue to be resolved is whether there was sufficient evidence to support the decision of the Local Board. The State Board of Education follows the rule that if there is any evidence to support the decision of the local board, then the decision of the local board will not be disturbed upon review. Antone v. Greene County Bd. of Ed., Case No. 1976-11. Appellant argues that the State Board of Education does not have to follow this standard and the facts of

case dictate a review of the standard. Appellant states that the testimony of the student was not supported by the testimony of other witnesses who placed Appellant at different locations than alleged by the student. Appellant's excellent reputation in the community, his popularity as a coach and teacher, the support of his wife, the vulnerability of teachers to such charges, and the questionable veracity of the student are all pointed to as reasons for reconsidering the "any evidence" rule which the State Board of Education follows.

In Ransom v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978), the Court held that a superior court had properly used the "any evidence" rule in upholding the decision of a local board of education to terminate the contract of a teacher. The Court stated that "Having found that there existed evidence sufficient to support the decision of the local board, the superior court was bound to affirm it." Id. at 785. The Court also stated that both superior courts and the State Board of Education sit as appellate bodies, which historically have followed the "any evidence" rule. By equating the superior courts and the State Board of Education as appellate bodies and holding that the superior court was bound to follow the "any evidence" rule, the Court clearly was stating that the "any evidence" rule was also applicable to the State Board of Education. The State Board of Education, therefore, is bound to follow the "any evidence" rule and is not free to adopt another standard.

Was there any evidence to support the decision of the

Local Board? The record shows that there was some evidence. In addition to the testimony of the student, there were the cards which the handwriting analysts linked to Appellant. The Local Board had to weigh the evidence and, as the trier of fact, had to decide which side to believe. It chose to believe the student, and the State Board of Education cannot substitute its judgment for the Local Board's. The Hearing Officer, therefore, concludes that there is evidence to support the Local Board's decision.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that the Local Board did not deny Appellant any of his due process rights and that there was evidence to support the Local Board's decision. The Hearing Officer, therefore, recommends that the decision of the Dougherty County Board of Education to terminate the teaching contract of Appellant be sustained.



L. O. BUCKLAND
Hearing Officer