STATE BOARD OF EDUCATION

STATE OF GEORGIA

EVERETT BYRD,	)	
Appellant,	)	
v.	)	CASE NO. 1983-24
TAYLOR 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 and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

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

All members were present.

This 10th day of November, 1983.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

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EVERETT BYRD,	)	
	)	
Appellant,	)	
	)	CASE NO. 1983-24
v.	)	
	)	
TAYLOR COUNTY BOARD OF EDUCATION,	)	
	)	REPORT OF
Appellee.	)	HEARING OFFICER

This is an appeal by Everett Byrd (hereinafter "Appellant") from a decision by the Taylor County Board of Education (hereinafter "Local Board") to dismiss him from his teaching contract for the 1983-1984 school year. The appeal is based upon Appellant's allegations that (1) the evidence did not support the charges; (2) the Local Board acted arbitrarily and capriciously; (3) Appellant's due process rights were violated; (4) cause for non-renewal was not shown, and (5) there were various procedural errors committed. The Hearing Officer recommends reversal of the Local Board's decision.

On June 3, 1983, Appellant received written notice from the Local Superintendent of a hearing before the Local Board on charges of incompetency, "partiality among students," "rudeness toward parent," and "wilfully furnishing wrong and misleading information to Board." The hearing before the Local Board was held on June 21, 1983. At the conclusion of the

hearing, the Local Board voted to terminate Appellant's teaching contract. The appeal to the State Board of Education was filed on July 18, 1983.

The charges against Appellant arose from four separate incidents, of which three were closely related. The first incident involved an appearance by Appellant before the Local Board in October, 1982, to explain the admission policies of the Key Club for which he served as faculty advisor. Appellant explained to the Local Board that the Key Club required a unanimous vote from all of the existing members in order for a new member to be admitted to the Club. Appellant also explained that the requirement was a requirement of the national Key Club organization. During the June 21, 1983, hearing before the Local Board, Appellant explained that his information was obtained from his working with other Key Clubs, and it was his understanding that there was a unanimous rule. There was also evidence presented that one of the Local Board members was aware that the national Key Club did not have a unanimous vote requirement, but the member did not inform any of the other Board members, and he did not challenge Appellant's information when Appellant appeared in October, 1982. There was no evidence to show that Appellant wilfully misinformed the Local Board. Appellant had been called before the Local Board in October without any advance notice of the reason for his appearance and he provided the best information available to him at the time, without any opportunity to verify his understanding of the actual requirements. The Hearing

Officer concludes that there was no evidence to support the charge that Appellant wilfully furnished wrong information to the Local Board.

The remaining three incidents occurred in February and March, 1983, and involved two twin sisters and Appellant's encounter with their mother. Appellant, an English teacher, had informed his class that book reports were due on a particular date in February, and that anyone who did not turn in the report on time would receive a zero grade. One of the sisters did not turn in her book report because she had not finished reading her book. When the student's mother learned that the student was to receive a zero grade, the mother asked for and received a conference with Appellant. Appellant agreed to meet with the school principal to discuss the matter. As a result of the conference with the principal, Appellant agreed to permit the student to hand in her book report two days late with a reduction of one letter grade for each day late. There was no evidence Appellant treated any other students differently, or that the students were uninformed of the penalties involved in being late with their book reports.

Within three weeks after the book report incident, the other sister failed to turn in her vocabulary words during class when they were due. The student explained that the reason she did not have her vocabulary words was because they had been taken out of her locker by another student. Following the class period, the student returned with another student and turned

in the words. The other student admitted he had taken the vocabulary words from the girl's locker. Appellant said he would consider the matter, but did not indicate whether he would change the grade. There was conflict in the testimony whether the student had enough time to complete her paper between the end of class and the time she returned with the other student and submitted her paper. The student told her mother of the incident after school was over for the day. The student's mother then went to the school to meet with Appellant about the grade. The mother testified that she was mad before she met with Appellant. The two of them met in the hallway within hearing distance from another teacher. After some discussion, the student's mother suggested that they should go to the Local Superintendent's office to discuss the matter. The observing teacher testified that Appellant raised his voice and told the mother that she could go and talk with whomever she wanted. The observing teacher was unable to hear most of the conversation between Appellant and the mother, although he was standing within fifteen feet from them. When Appellant told the mother she could talk to anyone she wanted, the conversation ended. Appellant later met with the student's mother, the principal, and the Local Superintendent. As a result of the meeting, Appellant agreed that he would not consider the zero grade in arriving at the student's grade average because of the extenuating circumstances. Appellant also wrote a note to the parent which stated that he may have

been hasty in his decision to give the student a zero. Appellant was not criticized, reprimanded, or otherwise disciplined or counselled as a result of the incident.

The following week, Appellant gave his English class their first spelling test. The student who had failed to turn in her vocabulary words received a grade of 54 on the spelling test. Appellant had not taught his class penmanship lessons, but he had told them to be careful not to mix cursive and printing when writing their words. Appellant marked as wrong the papers of all students who mixed cursive writing and printing of the letters "m" and "n". The student printed the letters "m" and "n", but used cursive writing for the other letters. The student's writing was above-average and she had correctly spelled the words which were marked wrong because of the mixed writing and printing. Upon the parents' complaint, another meeting was held by Appellant, the principal, and the Local Superintendent. Appellant agreed not to count the spelling test grades for the class since there was some confusion about the mixing of printing and cursive writing and whether the students were aware that the words would be counted as wrong. Again, Appellant was not criticized, reprimanded, disciplined or counselled as a result of the incident.

Following these incidents, the principal and the local superintendent recommended rehiring Appellant. The Local Board, however, refused to renew Appellant's teaching contract for the 1983-1984 school year. Appellant made a timely request for a

hearing on the Local Board's decision. The Local Board did not respond until the notice, dated June 3, 1983, was given to Appellant.

In each of the incidents, Appellant treated all of the students in the same manner, i.e., they were all aware of the consequences of failing to turn in their book reports on time, and the words were counted wrong for all those students who mixed printing and cursive writing of the letters "m" and "n". The Hearing Officer, therefore, concludes that Appellant did not show partiality among students.

The only statutory charge against Appellant was that he was incompetent. See, O.C.G.A. § 20-2-940 (Michie, 1983). Since it does not appear that Appellant either wilfully furnished wrong or misleading information to the Local Board, or treated any students differently from any other students, the only basis for concluding that Appellant was incompetent would be the fact that he raised his voice to a parent when he told her she could speak to whomever she desired when she suggested going to the Local Superintendent. Neither the principal nor the Local Superintendent considered the matter to be of enough importance to counsel Appellant or withhold their recommendations that his contract for the 1983-1984 school year be renewed.

If, however, there is any evidence to support the decision of a local board of education, the decision cannot be reversed by the State Board of Education upon review. See, Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783, 242 S.E.2d 374

(1978). In the instant case, the Local Board could decide from the testimony that Appellant was rude to the parent, notwithstanding the fact that the parent was admittedly mad before she met with Appellant, and the fact that an observing teacher could not clearly hear the conversation between the two except for Appellant's remark that the parent could see whomever she chose to see. The term "incompetent" is not a defined term, but the Local Board could expect its teachers to be able to interact with parents and remain calm when confronted with an admittedly angry parent.

Appellant, however, has raised an important procedural question in connection with the process followed by the Local Board. The Local Superintendent recommended renewal of Appellant's contrct for the 1983-1984 school year. The Local Board decided not to renew the contract. The record is incomplete in that the notice of nonrenewal required by O.C.G.A. § 20-2-942 was not admitted into evidence. Through his attorney, however, Appellant acknowledged that he received the required notification prior to April 15, 1983. Appellant submitted his request for a hearing and statement of the charges within the fourteen day period required by O.C.G.A. § 20-2-942(b)(2). Appellant's request for a hearing also is not contained in the record, but, because the hearing was held and the Local Board did not raise any objections to the hearing on the grounds Appellant did not make a timely request, the Hearing Officer concludes that the request was made and was timely. O.C.G.A § 20-2-942(b)(2) also

provides that when a teacher requests the institution of hearing procedures, then:

> Within 14 days of service of the request to implement the procedures, the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-940.

The Local Board did not respond with the written notice of charges until June 8, 1983, which was more than thirty days beyond the latest time that Appellant could have requested a hearing. The response by the Local Board was thus clearly beyond the fourteen day period provided for in O.C.G.A. § 20-2-942(b)(2).

Appellant argues that failure of the Local Board to provide the required notice resulted in his contract being renewed, and the Local Board is thus estopped to use the conduct complained of as the basis for a termination proceeding.

There is little question that if a local board does not give the teacher notice of nonrenewal by April 15, then the teacher's contract is considered to be renewed. There is also little question that if the teacher did not request a hearing within fourteen days after receiving notice of nonrenewal, then the teacher would not be entitled to a hearing. See, Woodberry v. Hancock County Bd. of Ed., case No. 1981-41. Based upon these initial strict time requirements, the Hearing Officer is pursuaded that the fourteen day time requirement imposed on a local board to present a list of charges is also mandatory, and if the local board does not present the list of charges within the period, then the teacher's contract is deemed to be renewed.

The Local Board responds by arguing that if the contract is deemed to be renewed, then the hearing proceeding was one for termination rather than nonrenewal. If, however, such an argument is accepted, then the fourteen day time requirement imposed on a local board is a nullity. In order to effectuate the language of the statute and the intent of the legislature, a local board cannot simply treat the hearing as one for termination rather than non-renewal. The only sanction available is to consider the local board estopped to raise the conduct which formed the basis for non-renewal as the same basis for termination.

Before and during the hearing, Appellant specifically raised the issue of whether his contract was renewed because of the Local Board's failure to comply with the fourteen day requirement. The Local Board acknowledged Appellant's argument in its June 3, 1983, letter in that the Local Superintendent stated that the hearing was for the purpose of considering the non-renewal or termination of Appellant's contract.

The Hearing Officer is pursuaded that under the circumstances presented by the instant case, where a notice of non-renewal is presented to a teacher and the teacher makes a timely request for a hearing, a local board is estopped from thereafter considering the hearing to be one for termination when it fails to comply with the fourteen day notice of the statute. This is the only approach which gives any meaning to the words of the statute.

Based upon the foregoing findings and conclusions, the Hearing Officer is of the opinion that the Local Board erroneously conducted a termination hearing after it failed to provide Appellant with the required notice within fourteen days after the teacher requested a hearing. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer

[Appearances: For Appellant - W. Terrell Wingfield, Jr.; For Local Board - Alex Davis.]