

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JOHN W. TERRY,)
Appellant,)
v.) CASE NO. 1984-5
HOUSTON COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

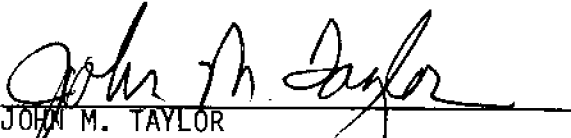
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Houston County Board of Education herein appealed from is hereby sustained.

Mr. Foster was not present.

This 9th day of August, 1984.


JOHN M. TAYLOR
Acting Vice Chairman for Appeals

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) REPORT OF
) HEARING OFFICER
)

This is an appeal by John W. Terry (hereinafter "Appellant") from a decision by the Houston County Board of Education (hereinafter "Local Board") to terminate his contract as a teacher on charges of incompetency, willful neglect of duties, and for good and sufficient cause. The appeal was made on the grounds the Local Board failed to make any findings of fact or give any reasons for its decision, there was error in permitting the introduction of evidence, the evidence did not support the charges, and the actions of the Local Board resulted in an unconstitutional prior restraint upon Appellant's activities. The Hearing Officer recommends that the decision of the Local Board be sustained.

Appellant was a physical education instructor. The Local System did not have a gymnasium, and the principal suggested that on days that it was raining, the children should be shown video films. Appellant testified that he had not attended a movie for several years. He went to the local video distributor,

told the clerk what he needed, and was given a copy of the film "Blue Thunder". Appellant testified that he was unaware there was a movie entitled "Blue Thunder" and thought the video was a tape of the television program with the same name. Appellant did not preview the video or view it after he received it. He also did not know that the movie was rated "R" under the movie industry standards.

On March 20, 1984, it was raining and Appellant permitted two of his classes to view the first forty-five minutes of the movie. While the video was playing, Appellant had his chair beside the television set so he was unable to view the set, but was able to watch the students as he graded papers. He did not notice anything which disturbed the students. Some of the students complained to their parents that the movie contained nude pictures and profane language.

On March 21, 1984, Appellant was notified of the charge and the fact that he was temporarily relieved from his duties as a teacher. The hearing before the Local Board was held on April 10, 1984.

During the hearing, the movie was shown to the Local Board members over Appellant's objection that the particular copy was not authenticated. The Local Board also heard testimony from the principal and from Appellant. At the conclusion of the hearing, the Local Board decided to terminate Appellant's contract. The appeal to the State Board of Education was made on May 8, 1984.

Appellant argues on appeal that his due process rights were violated because the Local Board did not make any findings of fact when it made its decision. This issue has been raised before the State Board of Education in previous cases and decided adversely to Appellant's contentions. In addition, the courts have also indicated that the due process rights of a teacher are not violated when a local board of education fails to make findings of fact.

Appellant also argues that the Local Board improperly viewed the video because it was not established that they were viewing the same film that was shown to the students. The principal, however, testified that he went to the distributor, was informed the copies were identical, and that each copy was numbered. The copy he received from the distributor had the same number as the one checked out by Appellant. Appellant admitted during the hearing that the video seen by the Local Board members was the same or similar to the one shown to the students, and that the film he showed to the students contained profanity and nudity. Under such circumstances, the video shown to the Local Board members was at least a fair representation of what was shown to the students and the failure to completely authenticate the video was not erroneous.

Appellant also argues that the evidence failed to show incompetency, willful neglect of duties, immorality, and other good and sufficient cause for dismissal. The State Board of

Education follows the rule that if there is any evidence to support the decision of a local board of education, then the decision will not be disturbed upon review. Ransum v. Chattooga Cnty. Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene Cnty. Bd. of Ed., Case No. 1976-11. In the instant case, it was established that Appellant failed to preview the film before showing it to the students and did expose them to nudity and profanity within the classroom. The Local Board, therefore, could find that there was evidence presented which warranted Appellant's dismissal.

Appellant has also attempted to argue that the Local Board's action results in an unconstitutional prior restraint upon his freedom of expression. This argument, however, is of no consequence. There was nothing in the record to show that Appellant was restrained in any manner, or that the Local Board's position would have resulted in any prior restraint. Appellant admitted that if he had known that the movie was "R" rated, he would not have shown it to the students, and that he was in error in showing the movie, or in not having previewed the movie. The Hearing Officer concludes that the Local Board's actions do not rise to the level of constitutional infringement of freedom of expression.

Based upon the foregoing, the record submitted, the briefs and arguments of counsel, the Hearing Officer is of the opinion

that there was evidence before the Local Board which authorized its dismissal of Appellant, and Appellant was not denied any due process or other constitutional rights during the course of the proceedings held. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer