

STATE BOARD OF EDUCATION

STATE OF GEORGIA

**IN RE: JOHN HEIL,
Petitioner,**

) **REPORT OF SPECIAL MASTER**
) **CASE NO. 1987-13**

ORDER

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Special Master, and after a vote in open meeting,

DETERMINES, that the State Department of Education had the authority to correct an administrative error made by a T.P.A.I. evaluator. Further, the appellant has a right to appeal to the State Board of Education under Policy GBBC when denied a certificate based upon the failure of the sixth T.P.A.I. assessment. A failure of the T.P.A.I. before the sixth assessment does not amount to a denial of a certificate. However, Petitioner should have what amounts to an administrative error corrected.

The State Board adopts the Special Master's findings of fact and conclusions of law insofar as it does not conflict with the foregoing.

WHEREFORE, it is ordered and adjudged that the error in question be corrected and Petitioner be granted a Performance-Based Certificate.

Mrs. Jasper was not present.

This 11th day of June, 1987.

Larry A. Foster, Sr.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE:

JOHN HEIL,

Petitioner,

vs.

**STATE DEPARTMENT OF
EDUCATION,**

Respondent.

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CASE NO. 1987-13

**RECOMMENDATION OF
SPECIAL MASTER**

PART I

SUMMARY

This is an appeal by John Heil (hereinafter "Petitioner") from a decision of the State Department of Education (hereinafter "Department") not to credit him with successfully completing his Teacher Performance Assessment. Petitioner contends that an error was made by one of the data collectors, the data collector acknowledged the error and it is, therefore, unjust for him to be required to be reassessed.

PART II

FACTUAL BACKGROUND

The State Board of Education has adopted a policy whereby teachers must successfully complete the Teacher Performance Assessment Instrument (hereinafter "TPAI") within a three-year period in order to obtain a performance-based certificate. Assessments are performed twice annually so that a teacher has six opportunities during the three-year period to obtain a performance-based certificate.

The assessment covers different areas of competence, and a teacher is required to pass all areas in order to obtain a performance-based certificate. The policy provides that if a teacher receives an 85% rating in any competency, then that rating is carried over and the teacher does not have to pass that

competency again. Also, if a teacher receives a 75% rating on two consecutive assessments for a single competency, then that competency is also carried forward.

The assessment ratings are obtained by having three trained raters observe new teachers, interview them, and review their instructional materials. The raters complete forms which require some subjective determinations within the constraints of the rating system established by the forms. Within each competency, there are several "indicators", each of which has to be completed by the raters. The ratings of the three observers are then averaged in order to obtain a score for each indicator. The indicators are then totalled to determine if a teacher has passed the competency.

Petitioner was assessed during the period from November 17 to November 25, 1986. He was informed after the assessment that he was not given credit for Competency VI-20-d. Petitioner believed he had met that competency and questioned the evaluators, who each said they also believed he had met that competency. One of the evaluators then stated that he had made an error and failed to enter the data on the scoring sheet to show that Petitioner had met the competency. The evaluator submitted a letter to the Director of Evaluation and Certification for the local board employing Petitioner, confirming that he had erred.

Petitioner appealed to the State Department of Education and the Department denied Petitioner's request for an appeal based upon the fact that Petitioner had five more chances to successfully complete the assessment.

PART III

DISCUSSION

Petitioner contends the error should be corrected and he should not be required to be reassessed and that it is unconstitutional not to correct the admitted error. Respondent does not contest that an error occurred, but takes the position that an appeal is not allowed from errors relating to observation scores. Respondent is following the State Board of Education Policy adopted in the Guidelines for the

Administration of Performance-Based Certification which provides that appeals will be accepted for planning section items only. The policy further states that observation scores are based on teacher performance during classroom visits conducted on different days. These items, therefore, are not subject to appeal.

Respondent further takes the position that the fact that multiple assessments are available to a teacher and that margins for error are already built into the scoring process mitigate the fact that an error may occur. Additionally, Respondent contends that allowing a change of observation data after the data has been compiled and the results shared with the teacher would set a precedent which would subject evaluators to questioning of the scores assigned, thus making it difficult to obtain evaluators to perform the assessments.

The State Department of Education is correct that it did not have the authority to grant Petitioner a hearing. Under the Guidelines for the Administration of Performance-Based Certification adopted by the State Board of Education the State Department of Education is only authorized to grant hearings on the portfolio portion of the TPAI.

The State Board of Education, however, has adopted State Board Policy GBBC, which provides that the denial of a certificate is subject to review by the State Board of Education. In the instant case, the refusal to correct the error results in a temporary denial of Petitioner's performance-based certification. Although Petitioner may be able to obtain a performance-based certificate at a later date, the temporary denial is still a denial. Thus, the refusal to correct the error does result in denial of a certificate and Petitioner is entitled to a hearing under State Board Policy GBBC.

Aside from the fact that the guidelines do not allow the State Department of Education to hear an appeal in the present case, the State Department of Education has raised three substantive reasons why Petitioner's request should be denied. First, the State Department of Education contends that Petitioner is entitled to take the test five more times and that this will assure him of the required due process. Second,

the State Department of Education contends that the test has a margin for error built into the scoring process which should be taken into account as correcting the error which did occur. Third, the State Department of Education contends that granting Petitioner's request will set a precedent of allowing the questioning of evaluators and will open the floodgates for appeals.

The fact that the Petitioner will be allowed to take the test five more times should not prevent him from having a clear error corrected. Petitioner will be required to prepare for the TPAI again even though he has met the requirements once. Additionally, even though it appears Petitioner is well qualified to pass the test again, it is questionable whether he would be able to raise this issue later if he did not pass. It seems unreasonable to require Petitioner to retake the assessment when he has met the requirements simply on the ground that he can take the test again.

The fact that a margin for error is built into the scoring mechanism has not been shown to justify refusing to correct a clear error. Additionally, any margin for error built into the scoring has not been shown to be intended to correct acknowledged errors as opposed to errors in subjective judgment.

Finally, the argument that correcting the error will set a precedent which could mean more appeals and subject evaluators to questioning does not justify refusing to correct a clear error. First, evaluators will be no more subject to questioning than they are now. As the situation currently exists, there is no reason why evaluators cannot be questioned regarding their evaluation. There is, however, nothing that requires evaluators to discuss their evaluations. This case differs in that the evaluator acknowledged an error was made as a result of his oversight. Had the evaluator said he did not wish to change his scoring the Petitioner would not have any recourse. Where, however, the evaluator said he inadvertently failed to fill in a blank he intended to fill in, the error should be corrected. Allowing the error to be corrected might result in more appeals coming to the State Board of Education, but that fact should not prohibit correction of the error. It is better that the State Board of Education be given the chance to review and correct possible errors, rather than the courts, because the State Board is in a better position to understand the educational process which is involved.

PART IV

DECISION

Based upon the record submitted and the arguments made by Petitioner and the Department, the Special Master is of the opinion that an error was made in scoring Petitioner's assessment, which resulted in Petitioner not obtaining a performance-based certificate. The State Department of Education does not, under current policy have the authority to correct the error, but the State Board of Education does have the authority to correct the error. The Special Master, therefore, recommends that the error be corrected and Petitioner be granted a Performance-Based Certificate.

L. O. Buckland
Special Master