

STATE BOARD OF EDUCATION

STATE OF GEORGIA

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| DONNA TEEM, | : | |
| | : | |
| Appellant, | : | CASE NO. 1987-35 |
| | : | |
| v. | : | |
| | : | |
| WALKER COUNTY BOARD | : | |
| OF EDUCATION, | : | DECISION |
| | : | |
| Appellee. | : | |

PART I

SUMMARY

This is an appeal by Donna Teem (hereinafter "Appellant") from a decision of the Walker County Board of Education (hereinafter "Local Board") to accept the recommendation of a tribunal of the Professional Practices Commission to terminate Appellant's contract as a teacher for the 1987-1988 school year on the grounds of other good and sufficient cause because of Appellant's conduct with a student. Appellant contends on appeal that the Local Board could not terminate her when it had renewed her contract with knowledge of the offenses for which she was later charged in the termination proceeding and that the acts for which she was terminated did not constitute good and sufficient cause. Additionally, Appellant contends the Tribunal relied on statements of counsel which were not evidence in making its recommendation to the Local Board.

PART II

FACTUAL BACKGROUND

Appellant is a teacher who was employed by the Local Board to teach in the field of health occupations. During the 1986-1987 school year, Appellant became close to a student who was having emotional problems. The student had been treated by counseling professionals regarding her drug use and regarding her tendency to depend upon other individuals to a great extent. Appellant visited the student at her house and the student, likewise, visited Appellant. During the visits, the Appellant's two minor children were usually present. Additionally, Appellant and the student carried on regular telephone conversations.

Appellant wrote several letters or notes to the student that she maintains were intended to assist the student with the student's emotional problems. The letters contained profanity, suggested that the letters and the information contained in the letters be kept from the student's parents, and were generally filled with notional discussions.

The student's parents, at first, accepted the relationship between the student and Appellant as an attempt by Appellant to assist the student with her problems. Later, however, after the letters were found, the student's father became concerned about Appellant's influence over the student and asked her not to see the student outside of school hours. The student's parents also spoke with Appellant's principal regarding the situation and Appellant's principal recommended Appellant not see the Student outside of the regular classroom. Appellant did see the Student after school hours subsequent to the request by the student's father, and subsequent to the recommendation by Appellant's principal. Appellant contended, however, that the student approached Appellant and initiated a conversation when Appellant was in her own car.

The Local Board renewed Appellant's teaching contract for the 1987-1988 school year *at the same* time it renewed other teacher contracts in March of 1987. The principal, however, did not give Appellant her contract in April because of the situation with the student. Because Appellant was a tenured¹ teacher, and she was not notified of non-renewal by April 15, 1987, her contract was automatically renewed by operation of law. During the time from April until June, the local school officials were investigating the circumstances surrounding the teacher's involvement with the student.

By certified letter, dated June 8, 1987, Appellant was notified by the Local Superintendent of his intent to recommend termination of her employment contract. Appellant was notified that the recommendation was based on good and sufficient cause for termination because of:

1. Unprofessional conduct regarding your interactions with [the student] and her parents;
2. Dereliction of duty regarding your conduct with (the student);
3. Failure to respect and follow expressed wishes of (the student's parents);
4. Failure to follow instructions of [Appellant's principal] regarding [the student and her parents];
5. Setting bad example for a student in your conduct and language with [the student].

A hearing was held by the Tribunal on June 24, 1987. In addition to the facts related above, Appellant testified that she was aware of some occasions where the Student used illegal drugs, and Appellant did not report that fact to anyone. The Tribunal concluded that there was good and sufficient cause for the termination of Appellant's teaching contract and recommended to the Local Board that Appellant's contract be terminated. On August 7, 1987, the Local Board adopted the findings of fact and conclusions of law of the Tribunal and found good and sufficient cause for the termination of Appellant's contract.

¹ After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure".

PART III

DISCUSSION

Appellant contends first on appeal that the Local Board is estopped from terminating her because it renewed her contract with knowledge of the conduct the Local Board contends warrants termination of Appellant's contract. The record does not support this contention by Appellant. It *is* clear that an investigation was ongoing regarding Appellant's conduct, at or around the time Appellant's contract was renewed. The fact that an investigation was ongoing makes it clear that the facts had not been determined at the time of the renewal. A local board is not required to jump to conclusions and non-renew a teacher because it has evidence which might lead to termination. A local board is entitled to review the evidence and make a determination whether the evidence is sufficient to warrant termination. Thus, Appellant's first contention does not reflect the facts of the *case*.

Appellant's second contention is that she committed no violations during the contract year for which she was being terminated. It is her position that, because the conduct occurred during the time of her 1986-1987 contract, the conduct cannot be used to terminate her 1987-1988 contract. This argument is similar to the previous argument and *is* without merit. The Local Board found out that the teacher had committed an act which warranted termination of her teaching contract. The principals in the cases cited by Appellant, while appropriate in general contract cases, are inapplicable to a teacher termination *case* where a local board investigates a teacher's past conduct to determine if good cause *exists* to terminate the teacher.

Appellant's third contention is that the hearing tribunal erred in considering argument of counsel as evidence. This contention is based on the fact that the tribunal quoted counsel for the Local Board in its recommendation. The quoted statement related to counsel's argument that the Local Board had a practice of accepting the recommendation of the superintendent on contract renewals once the recommendation was made.

While Appellant is correct that argument of counsel should not be considered as evidence, any such consideration was, in this case, harmless error. As has been previously stated, the Local Board was entitled to investigate the conduct, renew Appellant's contract during the investigation, and then terminate Appellant's contract after obtaining the results of the investigation. To hold to the contrary would mean that a Local Board would be required to non-renew teacher contracts based upon suspicion and rumor, or before an investigation is concluded. Such a course of action would cause untold damage to a teacher when the suspicion and rumors may prove untrue, or when the investigation may reveal no wrongdoing. Thus, even if the tribunal considered counsel's statements as evidence, the result would not be changed.

Appellant's final contention is that good and sufficient cause did not exist to terminate her teacher contract. Appellant bases her contention on her argument that the tribunal's recommendation concerned only the fact that the tribunal considered the Appellant to have taken far more responsibility for counseling the student than was appropriate. The statement quoted, however, reads in part as follows:

On the basis of the foregoing Findings of Fact and the Tribunal's concern that respondent assumed far more responsibility for counseling the student than was appropriate without proper communication to responsible school authorities...

Appellant's argument ignores the tribunal's reliance upon its findings of fact, which discuss the note written by Appellant. The tribunal found that the note itself showed that Appellant had far more than a normal teacher/pupil relationship, and that Appellant tried to keep the student's parents from finding out about the nature of the relationship and suggested that the student destroy the note. Additionally, the note contained language which the Local Board could find was so inappropriate as to be a basis for good and sufficient cause to terminate Appellant's contract.

If there is any evidence to support the decision of a local board of education, then the State Board of Education must support the local board's decision. See, 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, there is evidence that supports the Local Board's decision.

PART IV

DECISION

Based upon the foregoing discussion, the record presented, and the briefs of counsel, the State Board of Education concludes that there was evidence to support Appellant's termination. The decision of the Local Board is, therefore,

SUSTAINED.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals