



**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>IN RE:</b>	:	
	:	
<b>LEE ANN KITCHENS,</b>	:	
	:	
<b>Petitioner,</b>	:	<b>CASE NO. 1988-2</b>
	:	
v.	:	
	:	<b>RECOMMENDATION OF</b>
<b>STATE DEPARTMENT OF</b>	:	<b>SPECIAL MASTER</b>
<b>OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is a petition by Lee Ann Kitchens (hereinafter “Petitioner”) from a decision of the State Department of Education (hereinafter “Department”) to deny her a teaching certificate because of her failure to pass the Teacher Performance Assessment Instrument (hereinafter “TPAI”) Appellant failed as a result of her low scores on the competency requiring that a teacher demonstrate enthusiasm for teaching and learning and the subject being taught and the competency requiring that a teacher help learners develop positive self-concepts. The Department contends there was no error in the process and that the petition should be denied.

**PART II**

**FACTUAL BACKGROUND**

Petitioner was denied her certificate based upon her failure to pass the On-The-Job-Assessment portion of the TPAI. At Petitioner’s request, Petitioner was provided a hearing before the Certification Hearing Officer to challenge the denial. At the hearing, it was established that Petitioner had been assessed six times and had failed to post a passing score with respect to the competency

requiring a teacher to demonstrate enthusiasm for teaching and learning and the subject being taught, and the competency requiring a teacher to help learners develop positive self-concepts. Evidence was presented at the hearing below to show that Petitioner failed to obtain the necessary scores on the two competencies during six evaluations. Petitioner's contentions at the hearing below were as follows:

1. That she should have been allowed to videotape the classes which were being assessed and that she was denied that right;
2. That the assessors talked with each other during the evaluation time thus invalidating the assessment;
3. She did not receive the required orientation and staff development;
4. Permanent denial of her right to teach is a denial of due process;
5. The fact that she was not informed of her right to appeal individual assessments is a denial of her due process rights;
6. The rating system of the TPAI instrument is too subjective rendering results arbitrary;
7. Failure to follow the Administrative Procedure Act with respect to submitting the rules and requirements to the Secretary of State invalidates the process; and
8. The competencies were too subjective.

The Certification Hearing Officer declined to consider three issues:

1. Whether Petitioner received the orientation and staff development required by the State Board of Education prior to and during the assessment process;
2. Whether the statutory presumption of unfitness after the sixth assessment, and thus permanent deprivation of the right to teach in the state of Georgia without the benefit of additional opportunity to attempt and/or secure certification, is a denial of the right to hold certification in the State of Georgia without due process; and
3. Whether, having failed, pursuant to Official Code of Georgia §50-13-1 et. seq., to have properly submitted the TPAI rules and requirements to the Georgia Secretary of State for filing and public inspection, said requirements can be validly imposed against Petitioner.

The State Department countered Petitioner's contentions with testimony that the single assessment appeal process was not applicable to Petitioner's case, that the assessors denied any impropriety in the manner of assessment and that Petitioner failed to make any complaint at the time of the assessment regarding any impropriety, videotaping is not allowed, and that the competencies are valid indicators of necessary teaching skills.

The Certification Hearing Officer ruled that the purpose of the hearing was to determine if improper procedure in the sixth assessment had occurred that warranted relief for Petitioner. He then determined that the only issue raised relating to improper procedure was the issue of whether the raters acted improperly by talking during Petitioner's assessment. Based upon the evidence presented the Certification Hearing Officer determined there was not sufficient evidence to support Petitioner's contention that the raters acted improperly.

Petitioner appeals the decision of the Certification Hearing Officer to the State Board of Education.

### **PART III**

#### **DISCUSSION**

In her letter of appeal the Petitioner has renewed each of the contentions which were made before the Certification Hearing Officer. No brief of Petitioner's position has been presented and no appearance was made at the opportunity given for oral argument.

Without further argument than exists in the record, it is difficult to determine the basis for Petitioner's position on appeal. No right to videotape her assessments has been demonstrated and no reason has been set forth to show why the Certification Hearing Officer's decision was in error. The record does not show that any required orientation or staff development was denied. Additionally, Petitioner has asserted various general statements alleging due process and statutory

violations without providing any explanation or authority for her positions. Such allegations are too broad to be considered by the State Board of Education.

Petitioner also asserted that the competencies and rating method are too subjective. Once again, however, the Petitioner has not demonstrated why the competencies are too subjective or provided any legal authority to support her position.

Petitioner has not presented any evidence that establishes that the TPAI was improperly administered or is an improper measure of a teacher's competency. The process is designed to allow six attempts to demonstrate minimum competence before different observers. Petitioner has not shown that the assessment process is defective and this petition should be denied.

#### **PART IV**

#### **RECOMMENDATION**

Based upon the record submitted and the arguments made by the Department, the Special Master is of the opinion that Petitioner has not shown sufficient reasons why her request for a certificate should not be denied. The Special Master, therefore, recommends that Petitioner's request for an additional opportunity to be assessed be DENIED.

L. O. Buckland  
Special Master