

The Assistant Superintendent for Personnel attempted to have a meeting with Appellant to explain the plan of improvement, but Appellant made excuses for being unable to attend the meetings. A meeting was finally held on August 31, 1987 after the Assistant Superintendent drove to Appellant's school and hand-delivered a demand that Appellant attend the meeting. During the meeting, the plan of improvement was discussed with Appellant and her attorney.

The Local Board provided Appellant with instruction on the TPAI. She was also provided with the opportunity to request any additional assistance if she desired.

Appellant's first TPAI assessment occurred in the later part of September. In order to assure objectivity, the Local Board obtained data collectors from outside Appellant's school. Appellant failed to pass a single minimum competency of the eight measured by the TPAI.

As part of the TPAI, a teacher has to submit a portfolio that contains lesson plans, information about the subject and the class, and goals to be accomplished. Appellant's portfolio was incomplete and illegible. Rather than use a standardized test to group her class, as required by the TPAI, Appellant used the results of an examination she had prepared. Appellant had also included student names, contrary to the TPAI instructions.

Another assessment was given to Appellant in the spring. Appellant failed to submit her portfolio on time. When she finally submitted it, it was a copy of the one she had prepared for the fall assessment, even though Appellant signed a certification that the portfolio was original. As a result, Appellant was not given any credit for the spring portfolio. She also failed to pass any of the minimum competencies that were based upon the classroom observations by the data collectors.

In another incident, Appellant was requested to submit a budget for some additional equipment for her classroom. Appellant submitted a budget for \$12,200, which was in excess of

the amount required to fully equip a new classroom that did not have any equipment. Appellant was told that she was asking for unnecessary equipment and directed to resubmit her request. Again, Appellant submitted a request for \$12,200.

Appellant was notified that the Superintendent would not recommend renewal of her teaching contract. Appellant requested a hearing before the Local Board. Appellant was notified on August 3, 1988 that a hearing would be held on August 18, 1988. When the hearing began, Appellant complained that she had been unable to hire an attorney to represent her.

At the conclusion of the hearing, the Local Board found that Appellant was incompetent and insubordinate, and had willfully neglected her duties. Appellant then appealed to the State Board of Education.

PART III

DISCUSSION

Appellant maintains on appeal that her due process rights were violated because she was not represented by an attorney. In addition, she maintains that the evidence submitted did not support the charges.

Appellant was given notice by the Local Board that she had the right to be represented by an attorney. There was adequate time for Appellant to obtain the services of an attorney, and she had an attorney correspond with the Local Board to obtain a postponement of the hearing. During the hearing, the Local Board permitted Appellant to introduce any evidence she desired and to cross-examine and argue with witnesses. Appellant has not cited any case authority for the proposition that her failure to have counsel present when she was given the opportunity results in a denial of due process. The State Board of Education, therefore, concludes that Appellant was not denied due process.

A local board of education has the burden of proving the charges against a teacher. If, however, there is any evidence to support the decision of a local board, the State Board of Education will not reverse the decision on appeal. See, Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11.

There was substantial evidence presented that Appellant was incompetent. She failed to pass any of the minimum competencies contained in the TPAI. One witness testified that Appellant was in the lowest five percent of any teachers that the witness had assessed. Appellant failed to follow the instructions she was given for preparing her portfolio, and she submitted the same portfolio for two different assessments, even though she signed a certification that stated the portfolios were different. As a result, Appellant taught the same class to her students in the fall and in the spring. The spring portfolio also contained the names of students who were no longer in her class, even though the inclusion of student names in the portfolio was improper. In addition, Appellant was either incompetent or insubordinate when she failed to prepare a proper equipment request for her classroom.

Because of the substantial evidence of Appellant's incompetency, the Local Board's decision not to renew Appellant's teaching contract is supported without the State Board of Education having to consider the charges of insubordination and willful neglect of duties. It does, however, appear that Appellant willfully neglected her duties concerning her preparation for the TPAI assessments, especially the requirements connected with the preparation of a portfolio. Appellant offered numerous excuses why she was unable to prepare the fall portfolio, but she then turned in the same portfolio in the spring after there was sufficient time to learn what was required and make corrections. We can only conclude that Appellant willfully neglected her duties.

PART IV
DECISION

Based upon the foregoing, the record submitted, and the briefs and arguments of counsel, the State Board of Education is of the opinion that the Local Board did not deny Appellant any due process rights and that there was evidence presented to support the Local Board's decision not to renew Appellant's teaching contract because of incompetence, willful neglect of duties, and other good and sufficient causes. The decision of the Local Board, therefore, is

SUSTAINED unanimously. Mr. Carrell was not present.

This 9th day of February, 1989.

John M. Taylor
Vice Chairman For Appeals