

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GREGORY OLIVER,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2001-27
	:	
LEE COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Gregory Oliver (Appellant) from a decision by the Lee County Board of Education (Local Board) to terminate his employment contract as a principal based upon finding him guilty of immorality, incompetence, insubordination, willful neglect of duties and other good and sufficient cause as set forth in O.C.G.A. § 20-2-940. Appellant argues that he was denied due process because he was not granted a continuance when his attorney failed to appear for the hearing, procedural errors were made throughout the hearing, and there was no evidence to support the charges. The Local Board’s decision is reversed.

The Local Board hired Appellant as a principal on July 1, 2000. On September 29, 2000, the Local Superintendent informed Appellant that a recommendation would be made to the Local Board to terminate his contract because of immorality, incompetence, insubordination, willful neglect of duties, and other good and sufficient cause. When the Local Board convened to hear the charges, Appellant’s attorney was not present and Appellant asked for a continuance. The hearing officer denied the request for continuance despite Appellant’s repeated objections that he

was unprepared to go forward, that he expected his attorney to be present, and that his attorney had his documents and subpoenas.

O.C.G.A. § 20-2-940(d) provides:

Any ... principal ... shall be entitled to be represented by counsel....

O.C.G.A. § 20-2-940.

As a general rule, continuances are not favored and are within the sound discretion of the trial court. *See, e.g., Rutledge v. State*, 152 Ga. App. 755, 264 S.E.2d 244 (1979). Where, however, the denial of a continuance results in the denial of the right to be represented by counsel of one's own choosing, the denial constitutes an abuse of discretion. *See, Walker v. State*, 194 Ga. 727, 22 S.E.2d 462 (1942).

In the instant case, it was a clear abuse of discretion not to grant a continuance upon Appellant's assertion that he expected his attorney to be present for the hearing. While the record shows that Appellant and his attorney may have had a dispute on the presentation of evidence on the day before the hearing, it does not show that Appellant asked for a continuance for the purpose of delay. The attorney apparently had subpoenas and documents for the hearing that were unavailable to Appellant.

It was unreasonable to expect a lay person to defend, at the last minute, against extensive charges that covered more than five single-spaced typed pages. Appellant did not know

procedures or how to ask questions or phrase objections. Consequently, he apparently irritated the hearing officer, who openly admonished him in front of the Local Board: "I'm really getting tired of these shenanigans," and "I'll have you escorted out of here, Mr. Oliver, and we'll proceed without you." In addition, the hearing officer admitted 60 documents into evidence before any witnesses testified and without any stipulation by the parties.

All of the witnesses were employees of the school system and available on short notice. There was no showing by the Local Board that it had a backlog of cases waiting for disposal such that a continuance would have worked any hardship on the school system, the witnesses, or others that were to be disciplined or dismissed. Appellant was not in a critical position that demanded his immediate removal.¹ Compelling reasons existed to grant Appellant a continuance without any countervailing reasons to proceed immediately without the assistance of counsel, which is a right granted under O.C.G.A. § 20-2-940.

We do not know whether the presence of an attorney would have made any difference in the outcome of the proceeding. There was evidence that Appellant did not fully complete at least one application form he submitted when he interviewed for the position of principal and he had some personal relationship problems with some of the teachers. An attorney, however, may have been better prepared to show that Appellant's dismissal was in retaliation for the grievances he filed when the Local Superintendent removed him from the principal position to a job in the main office, or to avoid any confrontation with the hearing officer that may have had a

¹ Weeks before the hearing, the Superintendent transferred Appellant from his position as principal to a clerical position in the main office.

detrimental influence on the Local Board, or to present a defense against the evidence that was presented.

In summary, Appellant had a right to be represented by counsel, that right was denied to him when his attorney failed to appear for the hearing and Appellant was forced to attempt to defend himself in a lengthy, complex hearing without any compelling necessity for the hearing to be held at that particular time.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board abused its discretion by not granting Appellant a continuance upon his motion when his attorney failed to appear for the hearing. Accordingly, the Local Board's decision is REVERSED.

This _____ day of June 2001.

Bruce Jackson
Vice Chairman for Appeals