

The Professional Development Plan was prepared at the beginning of the third quarter of the 1991-1992 school year. At the end of the second quarter of the 1991-1992 school year, Appellant's overall failure rate was 40.4 percent. When the Professional Development Plan was presented to Appellant, he asked for an extended medical leave of absence. Appellant indicated an intent to retire, but when he did not submit his resignation by April 13, 1992, the Local Superintendent gave him notice that his contract for the 1992-1993 school year would not be renewed. Appellant requested a list of reasons and a hearing on the non-renewal of his contract. The Local Superintendent informed Appellant that his contract would not be renewed because of insubordination, willful neglect of duty, incompetency, and other good and sufficient cause. Appellant was charged with failure to change his grading practices or modify his teaching techniques to reduce his failure rate following the principal's January 14, 1992, memorandum. Appellant was also charged with failure to take any action required under the Professional Development Plan that was presented to him on March 6, 1992. The Local Superintendent charged that Appellant was "hostile, combative, defensive, and uncooperative" during conferences with the principal during the school year. The Local Superintendent also charged that Appellant reacted unprofessionally and defensively with parents who requested conferences during the school year.

Appellant's counsel requested the records of the students in Appellant's classes for three years, the test scores for the students, and teacher grade books. The Local School System's counsel objected to production of the records because disclosure would violate the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g. A hearing officer appointed by the Local Board ruled that the Local School System could limit its production to the grades for the ninth grade general level social studies in two other classes for the two quarters of the 1991-1992 school year.

During the hearing before the Local Board on June 10, 1992, evidence was presented that several other teachers had failure rates that exceeded 21.88 percent in individual classes during the fall quarter of the 1991-1992 school year, and some teachers had overall failure rates that exceeded 21.88 percent. The record also shows that the failure rates in general level classes were significantly higher than the failure rates in the college preparatory classes.

After hearing the evidence, the Local Board voted not to renew Appellants contract. Appellant then filed an appeal to the State Board of Education.

PART III

DISCUSSION

Appellant claims that the hearing officer improperly restricted the direct examination of his expert witness. During the hearing, however, Appellant's counsel did not raise any issue about the restrictions placed on the expert witness. The hearing officer merely ruled that the line of questioning was not producing any relevant information. The record does not disclose that the hearing officer abused his discretion in limiting the testimony to relevant issues.

Appellant also claims that the hearing officer erred in refusing to compel the Local School System to produce the student records that were requested before the hearing because FERPA does not prohibit disclosure of educational records. The Local Board argues that while FERPA may not prohibit disclosure, the hearing officer did not err because he balanced Appellant's need for the records against the privacy needs of the students and the burden placed upon the Local School System to produce the records requested. The Local Board cites the case of Rios v. Read, 73 F.R.D. 589 (E.D.N.Y. 1977) for the balancing test.

Appellant argues that he was unfairly hampered in presenting a defense against the charges of insubordination and incompetence because he could not obtain the student records requested. Appellant, however, was given the grades of the students for the 1991-1992 school year, the period that was in question. From these records, Appellant was able to show that many teachers had high failure rates in their general level classes. If the hearing officer erred in not requiring all of the records to be produced, we conclude that the error was harmless.

Appellant also argues that the evidence did not support the charges and that the requirements imposed on him were arbitrary and capricious. The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, Ransum v. Chattoocia County Bd. of Educ., 144 Ga. App. 783, 242 S.E.2d 374 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976).

The record shows that Appellant had an overall failure rate of 49.5 percent during the fall quarter of the 1991-1992 school year. Following the issuance of the principal's directive, Appellant reduced his overall failure rate to 40.4 percent during the second quarter of the 1991-1992 school year. The failure rate in his college preparatory class was 19.2 percent. The record thus shows that even though he did not reduce his overall failure rate to 21.88 percent, Appellant changed his teaching or grading methods so that his overall failure rate dropped from 49.5 percent to 40.4 percent. Other teachers had overall failure rates that exceeded 21.88 percent and several had failure rates in their general level classes that were comparable to Appellant's. We conclude that Appellant attempted to comply with the principal's directive and there was no evidence to support a charge of insubordination based upon an overall failure rate that exceeded 21.88 percent.

The failure rates are, however, some evidence from which the Local Board could conclude that Appellant was incompetent. In comparing Appellant's general level classes with the general level classes of the other ninth grade social studies teachers, Appellant's failure rates were significantly higher. During the first quarter of the 1991-1992 school year, Appellant's failure rate was 49 percent and the other two social study teachers had failure rates of 19 percent and 29 percent. During the second quarter, Appellant had a 19.2 percent failure rate in his college preparatory class, while the other social study teachers had failure rates that did not exceed 8 percent in their college preparatory classes.

The Local Board argues that Appellant was insubordinate and willfully neglected his duties because he did not execute the procedures outlined in the Staff Development Plan that was prepared for him. The record, however, shows that Appellant was placed on medical leave of absence on the day following his receipt of the Staff Development Plan. There was no evidence that Appellant was directed to return to work or to complete the Staff Development Plan before the notice of non-renewal was given to him. We, therefore, conclude that Appellant's failure to perform any of the procedures under the Staff Development Plan do not constitute insubordination, willful neglect of duty, or incompetency.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that there was evidence before the Local Board to show that Appellant was incompetent. Accordingly, the Local Board's decision is

SUSTAINED.

This 14th day of January, 1993.

Mrs. King and Mr. Sears were not present.

Robert M. Brinson
Vice Chairman for Appeals