

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ULIANA GANCEA,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2009-35</b>
	:	
<b>ATLANTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	<b>DECISION</b>
<b>Appellee.</b>	:	

This is an appeal by Uliana Gancea (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to dismiss her because she failed to obtain a teacher certification from the Professional Standards Commission at the time of a hearing regarding her lack of a certificate. The Local Board acted after a hearing tribunal found that Appellant did not have a certificate and recommended a six-month suspension. Appellant claims that the Local Board acted capriciously because her certification arrived from the Professional Standards Commission between the hearing and the date the Local Board met to make its decision. Additionally, Appellant claims that the Local Board did not provide her with a 10-day notice before holding the hearing regarding her certificate. The Local Board's decision is reversed and the case remanded back to the Local Board.

On Wednesday, December 3, 2008, the Local Board's Human Resources Department told Appellant to appear at a hearing on Friday, December 5, 2008. When she arrived at the hearing, Appellant received a charge letter that the Local Superintendent was seeking to revoke her teaching contract under the provisions of O.C.G.A. § 20-2-940(a)(7), failure to secure and maintain necessary educational training, because of her failure to obtain a teacher's certificate from the Professional Standards Commission. Appellant claimed she was unprepared for the hearing because she had not received any prior notice and was unaware of the purpose of the hearing. The hearing officer granted a five-day continuance to let Appellant prepare.

The hearing reconvened on December 10, 2008. Appellant objected to going forward under the provisions of O.C.G.A. § 20-2-940(b) because she had not received notice ten days before the hearing. The hearing officer ruled against Appellant's objection when the school system presented evidence that a notice had been sent to a South Carolina address, which was the last address on one of the school system's databases. Appellant testified that she gave a change of address to the school system when she applied for her health insurance. The school system presented evidence that the health insurance information was part of a different database that was unconnected with the giving of notices to employees.

Evidence was presented at the hearing that Appellant had not received her teaching certificate from the Professional Standards Commission although the school system repeatedly asked her to obtain the certificate since she was hired in August 2008.<sup>1</sup> Appellant testified that she did not understand the process since she assumed that she had submitted everything required of her by the Professional Standards Commission and the school system. The tribunal received testimony that Appellant and the school system submitted everything required to issue a certificate to the Professional Standards Commission on December 5, 2008, the day the first hearing was scheduled, and the parties were awaiting issuance of the certificate by the Professional Standards Commission. A witness for the school system testified that the Professional Standards Commission website was accessed the day before the hearing and it showed that Appellant had not been issued a certificate.

The hearing officer made a finding that, as of the close of the hearing, Appellant did not have a teaching certificate issued by the Professional Standards Commission.<sup>2</sup> The tribunal voted to recommend that the Local Board suspend Appellant for not more than sixty days. The Local Board, however, voted on January 12, 2009, to terminate Appellant's teaching contract.<sup>3</sup> Appellant then filed an appeal with the State Board of Education.

On appeal, Appellant argues that she was denied due process because she was not given a ten-day notice of the hearing. Additionally, she argues that the Local Board's decision was arbitrary and capricious because the tribunal recommended a sixty-day suspension and the Local Board was aware that Appellant had been issued a certificate at the time it made its decision. The Local Board argues that the notice was proper because it was mailed more than ten days in advance of the hearing to Appellant's last address of record. Additionally, the Local Board argues that the State Board of Education's review must be confined to the record, which shows that Appellant was unable to produce a certificate at the time of the hearing.

Concerning Appellant's 10-day notice claim, the evidence shows that the Local Board mailed a notice of the charges to Appellant's South Carolina address on November 25, 2008, which was more than ten days before the scheduled December 5, 2008, hearing. While we think it remarkable that anyone in the school system would not be put on notice that a South Carolina address for one of its active teachers was obviously incorrect, the

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<sup>1</sup> Appellant acted pro se during the hearing.

<sup>2</sup> In fact, however, the Professional Standards Commission issued a certificate to Appellant on December 10, 2008, the day of the hearing. The certificate was effective as of July 1, 2008.

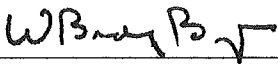
<sup>3</sup> The school system received a teaching certificate from the Professional Standards Commission on December 19, 2008, and instructed Appellant to return to work on January 5, 2009.

evidence shows that although Appellant submitted a change of address for her medical benefits, the South Carolina address was the last address submitted by Appellant for notice purposes. The State Board of Education, therefore, concludes that the hearing officer did not err in proceeding with the hearing over Appellant's objection.

The Local Board argues that in its review, the State Board of Education is confined to the record and cannot consider anything that was not introduced before the tribunal or the local board. O.C.G.A. § 20-2-1160(e), *Johnson v. Pulaski Cnty. Bd. of Educ.*, 231 Ga. App. 576, 499 S.E.2d 345 (1998). The evidence regarding the issuance of Appellant's certificate by the Professional Standards Commission was not before the tribunal. The certificate, however, was issued on the day of the tribunal hearing, before the Local Board made its decision, and the school system was aware of the fact. The basis for the Local Board's decision, therefore, did not exist, i.e., Appellant was dismissed because she did not have a certificate, which was a mistake of fact because she had a valid certificate at the time the Local Board made its decision. The Local Superintendent may not have notified the Local Board of the changed circumstances, thus putting the Local Board in the position of operating with a lack of knowledge. Regardless of the reason, the Local Board's decision was based on a mistake of fact and cannot stand.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board erred in dismissing Appellant because she did not have a teaching certificate. Since, however, the Local Board may not have been aware of the fact that Appellant had a teaching certificate at the time the Local Board made its decision, the decision is REVERSED and the case is REMANDED to the Local Board to reconsider in light of any evidence that Appellant can present that she has a teaching certificate.

This 14 day of May, 2009.

  
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William Bradley Bryant  
Vice Chairman for Appeals