

STATE BOARD OF EDUCATION

STATE OF GEORGIA

R. RUEL MORRISON

Appellant,

v.

DEKALB COUNTY BOARD OF  
EDUCATION,

Appellee.

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CASE NO. 1979-23


O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

HOLDS, that if an employee subject to the Fair Dismissal Act receives a letter of reprimand from the local board or the superintendent, the employee is entitled to a hearing under the provisions of the Fair Dismissal Act (Ga. Code Ann. Ch. 32-21c). The State Board of Education, therefore, does not adopt the findings and recommendations of the State Hearing Officer, and

IT IS THEREFORE ORDERED, that the decision of the DeKalb County Board of Education to not grant a hearing to Appellants is hereby reversed.

This 13th day of December, 1979.

  
THOMAS K. VANN, JR.  
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

J. PAUL COPELAND,

Appellant,

v.

DEKALB COUNTY BOARD OF  
EDUCATION,

Appellee.

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J. PAUL COPELAND,	:	
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Appellants,	:	
	:	
v.	:	REPORT OF
	:	HEARING OFFICER
DEKALB COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

R. Ruel Morrison (hereinafter "Appellant Morrison") and J. Paul Copeland (hereinafter "Appellant Copeland") separately appealed to the State Board of Education from decisions by the DeKalb County Board of Education (hereinafter "Local Board") not to grant them hearings in connection with letters of reprimand issued to them by the Local Board. The appeals were consolidated by the Hearing Officer because essentially the same issues are involved in both appeals. The Appellants' principal argument is that they were denied due process because the Local Board did not conduct a hearing. The Hearing Officer recommends that the decision of the Local Board be sustained with respect to Appellant Morrison and

that the appeal of Appellant Copeland be dismissed.

## PART II

### FINDINGS OF FACT

The Local Board issued letters of reprimand to Appellant Morrison and Appellant Copeland. Both individuals are senior administrative personnel employed by the Local Board. The letter of reprimand to Appellant Morrison stated that the Local Board "felt" that Appellant had violated the "spirit" of the Local Board's policy against gifts being made to Local Board members. Appellant Morrison admitted to the Local Board that he had contributed \$25.00 to the legal defense fund of a Local Board member who was seeking to retain his position on the Local Board. In addition, Appellant Morrison sought and obtained contributions from two other administrators who were not subordinate to him. The letter of reprimand to Appellant Copeland stated that Appellant was rude and insulting to the Local Board when he appeared before it for questioning. The parties agree that the letters were issued after Appellants appeared for questioning before the Local Board. The letters of reprimand were placed in the confidential personnel folders of the Appellants and are not released to the public. Both Appellants requested the Local Board to reconsider its decision and not place the reprimand in his personnel file. The

Appellants were advised that the Local Board would not reconsider its actions. Both Appellants have retained their positions and have not suffered any decrease in salary or loss of pay because of their actions and the Local Board's decisions. Both Appellants appealed to the State Board of Education and asked that the actions of the Local Board be reversed because they had been denied due process. Additional reasons for the appeals were raised which attacked the substantive basis for the reprimands, but these are not dealt with in this report because of the conclusions reached with regard to the basic issues.

### PART III

#### CONCLUSIONS OF LAW

Both Appellants argue that the Local Board is without the power to issue a letter of reprimand to an employee. They also argue that they were denied due process because the Local Board did not conduct a hearing when requested by Appellants. Both Appellants also argue that the Local Board violated the Code of Judicial Ethics because they pre-judged the cases without a hearing. Appellant Morrison further argues that he did not violate the Local Board's policy and the policy is unconstitutional.

The Local Board argues that it has inherent powers to issue a letter of reprimand to an employee.

Additionally, the Local Board argues that the Appellants' due process rights were not violated because there was no deprivation of property or liberty. The initial issue, therefore, is whether the Local Board has the right to issue a letter of reprimand to an employee.

Ga. Code Ann. §32-2105c provides that a local superintendent may issue a letter of reprimand to a teacher or other school employee for any valid reason. The teacher or other employer is then given the right to appeal the superintendent's decision to the local board and obtain a hearing before the local board. The local board has the power to affirm or reverse the decision of the Superintendent. The statutes, thus, give the power to issue a letter of reprimand to the local superintendent, but do not grant specific power to the local board. As pointed out by the Local Board, however, Article VIII, Section V, Paragraph II of the Constitution of the State of Georgia of 1976 states that the school district "shall be confined to the control and management of a County Board of Education." Ga. Code Ann. §2-5302. Additionally, Article VIII, Section V, Paragraph V provides that the school superintendent "shall be the executive officer of the board of education." A local board of education, therefore, is charged by the Constitution of the State of Georgia with the complete control and management of the county schools and is not limited by

statute. If the superintendent issues a letter of reprimand under the provisions of Ga. Code Ann. §32-2105c, he is serving as the executive officer of the local board.

A local board of education also has the power to terminate, suspend, demote, or nonrenew the contract of, an employee under the provisions of Ga. Code Ann. §32-2104c. The State Board of Education has decided that the power to terminate an employee, under Ga. Code Ann. §32-2104c(a), includes the lesser power to demote, which is contained in Ga. Code Ann. §32-2104c(b). If there is a lesser power to demote, then the power to issue a letter of reprimand is included within a local board's powers to terminate, suspend, demote, or nonrenew the contract of, an employee. The Hearing Officer, therefore, concludes that the Local Board had the power to issue a letter of reprimand under both the Constitution of Georgia and the statutes.

Appellants contend that the placing of a letter of reprimand in their confidential personnel folders without a hearing being held denies them constitutionally protected due process rights. The Hearing Officer does not agree with this argument. In order to have a due process right, there must be some deprivation of a property or liberty interest. " 'The mere presence of derogatory information in confidential files' does not infringe an individual's liberty interest." Ortwein v.

Mackey, 511 F.2d 696 (5th Cir. 1975). Both Appellants admit that the proceedings before the Local Board were closed to the public and there is no allegation that the information will be released from Appellants' files.<sup>1</sup> See, Bishop v. Wood, 426 U.S. 341 (1976). Additionally, "if the hearing mandated by the Due Process Clause is to serve any useful purpose, there must be some factual dispute between an employer and a[n]. . . employee which has some significant bearing on the employees reputation." Codd v. Velger, 429 U.S. 624 (1976)(dictum). The case law clearly establishes that a letter of reprimand placed in a confidential file does not impact on any property or liberty interest of an employee.

The Due Process Clause does not provide that in every situation there must be a complete trial of a matter before a court of law, with the right to counsel, the right to call and examine witnesses, and the right to a jury of peers. As stated by the Supreme Court of the United States in Codd v. Velger, supra, "the remedy mandated by the Due Process Clause of the Fourteenth Amendment is 'an opportunity to refute the charge.' (cites omitted). 'The purpose of such notice and hearing is to provide the person an opportunity to clear his name.' (cites omitted)"

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<sup>1</sup> Appellants do, however, contend that the fact of their reprimands was released to the public and appeared in the local news media. There is, however, no evidence or indication that the information was given to the news media by the Local Board.



429 U.S. at 627. Both Appellant Copeland and Appellant Morrison appeared before the Local Board and were given an opportunity to clear their names.

Appellant Copeland denies that he made certain statements to the Chairman of the Local Board, but he appeared before the Local Board and voluntarily answered questions after being advised he could be represented by counsel. He also claims his physical condition was a mitigating factor, but the Local Board could see his physical condition and assess for itself if such condition was sufficient to warrant the perceived rudeness. The Hearing Officer, therefore, concludes that Appellant Copeland did not have any property or liberty interests infringed, and he was afforded a hearing.

Appellant Morrison does not deny that he discussed making contributions, that he made a contribution of \$25.00 and received contributions from two other administrators. Appellant Morrison does assert that his contribution was philanthropic and did not violate the Local Board policy, and that he performed no illegal act. The letter of reprimand issued by the Local Board does not make any allegations that the policy was violated or that any illegal act occurred. It acknowledges his assertion that the contribution was philanthropic. There does not, therefore, appear to be any basic conflict between the admissions and denials of Appellant Morrison and

the assertions contained in the letter of reprimand. Appellant Morrison also appeared before the Local Board and was given an opportunity to clear his name. The Hearing Officer, therefore, concludes that Appellant Morrison did not have a property or liberty interest that was infringed, and he was afforded a hearing.

Ga. Code Ann. §32-910 provides that a local board of education shall be the tribunal for hearing any matter of local controversy involving the construction or administration of school law, "with the power to summon witnesses and take testimony if necessary. . . ."

Appellant Copeland's letter of reprimand does not involve the interpretation or administration of school law, but arose from his appearance before the Local Board. His hearing, and the resulting letter or reprimand, are not, therefore, appealable to the State Board of Education under the provisions of Ga. Code Ann. §32-910. See, Boney v. County Bd. of Ed., 203 Ga. 152 (1947).

Appellant Morrison's letter of reprimand, however, arose from a controversy involving the interpretation or administration of a Local Board policy. It does, therefore, fall within the provisions of Ga. Code Ann. §32-910 and the State Board of Education has the power to review the Local Board's decision on appeal. On review, however, if there is any evidence to support the decision of the local board of education, then that

decision will not be reversed. Antone v. Greene County Bd. of Ed., Case No. 1976-11. Although a transcript was not submitted with the record, there is evidence contained in the admitted facts that would permit the Local Board to issue a letter of reprimand which acknowledged that Appellant Morrison had not violated the Local Board policy, but the Local Board "felt" that the "spirit" of the policy had been violated.

#### PART IV

#### RECOMMENDATION

Based upon the foregoing findings and conclusions, and the briefs and oral arguments of counsel, the Hearing Officer is of the opinion that the appeal of Appellant Copeland should be dismissed because it does not arise under the provisions of Ga. Code Ann. §32-910 and there has not been a showing that any due process rights have been violated. The Hearing Officer is also of the opinion that no due process rights of Appellant Morrison have been violated and the Local Board had the power and authority to issue a letter of reprimand based upon the evidence before it. The Hearing Officer, therefore, recommends that the appeal of Appellant Copeland be dismissed and that the decision of the DeKalb County

Board of Education to issue a letter of reprimand to  
Appellant Morrison be sustained.

*L. O. Buckland*

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L. O. BUCKLAND  
Hearing Officer