

STATE BOARD OF EDUCATION

STATE OF GEORGIA

FURMAN BROOKS, :
Appellant, :
v. : CASE NO. 1982-1
WHITE COUNTY BOARD :
OF EDUCATION, :
Appellee. :

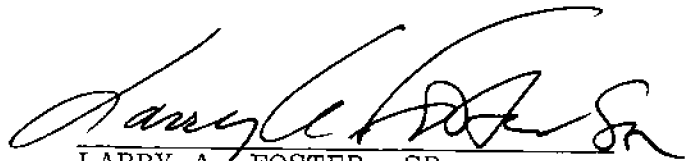
O R D E R

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,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the White County Board of Education herein appealed from is hereby sustained.

This 13th day of May 1982.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

FURMAN BROOKS,	:	
	:	
Appellant,	:	CASE NO. 1982-1
	:	
vs.	:	REPORT OF HEARING OFFICER
	:	
WHITE COUNTY BOARD OF	:	
EDUCATION,	:	
	:	
Appellee.	:	

PART I

SUMMARY OF APPEAL

This is an appeal by Furman Brooks (hereinafter "Appellant") from a decision by the White County Board of Education (hereinafter "Local Board") to terminate his teaching contract on the grounds of immorality and acts of inciting, encouraging and counseling students to violate a valid state law. The appeal to the State Board of Education urges that the Local Board's decision was erroneous because of procedural defects in the hearing and because the evidence failed to support the charges. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II
FINDINGS OF FACT

On November 4, 1981, Appellant received a written notice from the Local Superintendent that he was charged with immorality, wilfull neglect of duties, and inciting, encouraging and counseling students to violate a valid state law, that the Superintendent was recommending that Appellant's teaching contract be terminated, and that a hearing would be held before a tribunal constituted by the Professional Practices Commission. The notice also advised Appellant he had the right to counsel and gave him a list of the witnesses to be heard. The hearing before the Professional Practices Commission tribunal was held on November 24, 1981. The tribunal concluded that the evidence supported two of the charges - immorality and inciting, encouraging or counseling students to violate a valid state law - and recommended termination of Appellant's teaching contract. On January 4, 1982, the Local Board met and voted to accept and adopt the conclusions and recommendations of the Professional Practices Commission tribunal. The appeal to the State Board of Education was made on February 1, 1982.

The Professional Practices Commission tribunal found that Appellant had engaged in a discussion concerning sodomy with some of his students during class hours. In response

to a question by one of the students whether he had practiced such sodomy, Appellant replied, "yes". The conversation was overheard by Appellant's immediate supervisor over the intercom system. The supervisor made notes concerning the conversation and reported the incident to the principal. Appellant was later questioned by the principal and the director of the Professional Practices Commission.

When the hearing began before the Professional Practices Commission tribunal, the law officer ruled that the standard of proof was "preponderance of the evidence". Additionally, the law officer ruled that the attorney for the White County School System could waive his opening argument. During the hearing, Appellant objected to the testimony of the principal on the grounds the director of the Professional Practices Commission had asked Appellant questions about the incident. Appellant's objection was overruled by the law officer and the principal testified about Appellant's responses when he was questioned after the incident.

The Professional Practices Commission tribunal found that the facts supported the charges that Appellant was immoral and had encouraged and counseled his students to violate a valid state law, but the evidence did not support the charge that Appellant had wilfully neglected his duties. The Professional Practices Commission tribunal recommended that Appellant be discharged.

PART III

CONCLUSIONS OF LAW

Appellant raised four grounds for error in his appeal to the State Board of Education. Appellant argued that the standard of proof followed by the tribunal was improper and that a stricter standard should have been followed. Appellant also charged that the law officer erred in permitting the principal to testify because the testimony prejudiced the tribunal. Additionally, Appellant argued that the tribunal improperly permitted counsel for the White County School System to waive his opening argument. The fourth ground urged was that the evidence presented did not sustain the charges.

Appellant relies on a recent decision of the United States Supreme Court in the case of Santosky v. Kramer, 50 U.S.L.W. 4333 (U.S. Mar. 24, 1982) to support his claim that he was denied due process because the standard of proof followed was "the preponderance of the evidence" rather than some greater standard. In Santosky, the Court held that the "fair preponderance of the evidence" standard denied parents due process in parental rights termination proceedings. The Court explained that due process requires the interests of the state and the parents to be balanced, and in a matter so critical as the permanent severance of the parental relation-

ship, the requirement that the state meet a higher standard of proof than "fair preponderance of the evidence" was not too severe a standard that the state could not accomplish its responsibilities.

The primary factor involved in Santosky was a liberty interest, rather than a property interest. In the instant case, the interest Appellant is seeking to protect is a property interest. Appellant has not cited any requirement that in cases involving a property interest there is a need for a greater standard of proof than the preponderance of the evidence. The preponderance of the evidence standard is used in the superior courts in civil matters. Dismissal hearings are guided by the same rules as are used by the superior courts in civil matters. See, Ga. Code Ann. §32-2101C(e). The Hearing Officer, therefore, concludes that Appellant was not denied due process through the Professional Practices Commission tribunal's use of the preponderance of the evidence standard.

Appellant also argued that he was denied due process because the Professional Practices Commission tribunal permitted the hearing to proceed when the attorney for the school system waived his opening argument. The argument is unsupported by any citation of law. There are no requirements set out in Georgia law that an attorney must make an opening argument. The attorney's approach is a tactical matter

rather than a procedural due process matter. Appellant claims that he has a right to know what arguments are to be made at the hearing prior to presentation of the case. This claim is based upon the concept that Appellant needed adequate time to prepare his defense. The objective, however, was accomplished by giving Appellant written notice of the charges and a summary of witnesses to be heard in a timely fashion with adequate information sufficient to enable him to prepare his defense. The Hearing Officer, therefore, concludes that Appellant's due process rights were not violated when the hearing proceeded after the attorney for the White County School System waived his opening argument.

Appellant also claimed he was denied due process because the principal was permitted to testify. Appellant argued that the Professional Practices Commission tribunal was biased as a result of the principal being allowed to testify about the questions asked by the director of the Professional Practices Commission because the fact that the Director asked the questions established credence to the charges. The record, however, does not show that the director of the Professional Practices Commission had an opinion one way or another about the charges. Since the basis for Appellant's argument is his claim of bias on the part of the members of the Professional Practices Commission tribunal, then the bias issue should have been raised at the hearing

rather than simply rejecting the principal's testimony. Because the issue was not raised at the hearing, it cannot now be raised on appeal. Additionally, there was no showing of any harm because the testimony of the principal did not substantially add to the testimony of Appellant's supervisor and Appellant's own testimony. The Hearing Officer, therefore, concludes that Appellant's due process rights were not violated by permitting the principal to testify.

Appellant's final argument was that the evidence did not support the charges. The State Board of Education, however, follows the rule that if there is any evidence to support the decision of a local board of education, then the decision will not be reversed upon appeal. See, Wilson v. Strange, 235 Ga. 156 (1975); Ransum v. Chattooga County Bd. of Ed., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Ed., Case No. 1976-11. In the instant case, there was evidence that Appellant engaged in the conversation with the students. The only essential clash of differences is in the severity with which the Local Board and Appellant saw the action. The Hearing Officer, therefore, concludes that there was evidence before the Local Board which supported its decision.

PART IV
RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant's due process rights were not abridged and the evidence supports the decision of the Local Board. The Hearing Officer, therefore, recommends that the decision of the Local Board be sustained.

(Appearances: For Appellant - Henry & Marshall, Andrew H. Marshall; For Local Board - Sartain & Carey, Roland Stroberg; Kenneth R. Keene)


L. O. BUCKLAND
Hearing Officer

MAY 4 1982

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: STARLEN B. : CASE NO. 1982-2
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: :

ORDER

By agreement of counsel, and from a review of the record it appears to be in the best interests of the student, it is

ORDERED, that the appeal herein is hereby dismissed.

This 3d day of May, 1982.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer