

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CAROLYN AKINS,)
Appellant,)
v.) CASE NO. 1985-35
BULLOCH COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

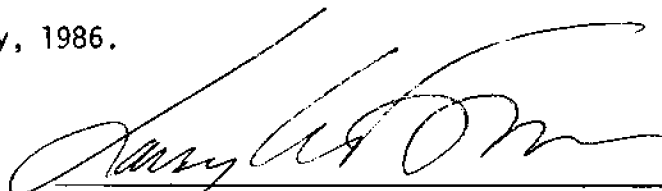
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

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 Bulloch County Board of Education herein appealed from is hereby sustained.

Mr. Temples was not present.

This 9th day of January, 1986.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

CAROLYN AKINS,)	
)	
Appellant,)	CASE NO. 1985-35
)	
v.)	
)	
BULLOCH COUNTY BOARD OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	STATE HEARING OFFICER

PART I

SUMMARY

This is an appeal by Carolyn E. Akins (hereinafter "Appellant") from a decision of the Bulloch County Board of Education (hereinafter "Local Board") terminating Appellant for immorality in that she was convicted of misapplication of program benefits in a school system sponsored activity. Appellant contends the Local Board was estopped from terminating her contract because the Local Board entered into the 1985-86 contract after it had knowledge of her conviction. The Local Board contends that the doctrine of equitable estoppel does not apply in this case. The Hearing Officer recommends the decision of the Local Board be sustained.

PART II

FACTUAL BACKGROUND

Appellant, prior to her termination, was a teacher with the Bulloch County School System (hereinafter "Local System")

for fifteen years. In addition to her normal teaching duties during the school year, she worked as a bookkeeper in the Federal Feed-A-Kid Program (hereinafter "Program") operated in the summer months by the Local System. The Program was designed to provide nutritious meals to selected categories of children. Appellant's husband acted as director of the Summer Program during the same period Appellant acted as bookkeeper.

In the summer of 1983, the Local School Superintendent (hereinafter "Superintendent") was contacted by a vendor who reported that an order had been placed for food items not normally used in the program. The next day, the Superintendent reported the information he had received to the Department of Agriculture and was advised by representatives of the Department of Agriculture that they would investigate the situation and that he was not to discuss the matter with the personnel involved in the program. Over the next nine months, the Superintendent made numerous inquiries of the investigatory wing of the Department of Agriculture. The Superintendent was told to wait for the results of the investigation and not to discuss the investigation with the employees of the Program.

In April of 1984, Appellant's contract as a Business Education teacher was renewed by the Local Board. At that time, the Superintendent still had not received the results of the Department of Agriculture investigation.

In July of 1984, a Federal Probation Officer visited the Superintendent regarding Appellant and her husband. The Superintendent understood that Appellant and her husband were being prosecuted in Federal Court and that the probation officer would get back to the Superintendent after the Court disposed of the matter.

The Superintendent recommended Appellant for renewal as a Business Education teacher in April, 1985. At that time, the Superintendent had received nothing definite concerning the investigation of Appellant. He had heard informally that Appellant had not been convicted but that her husband had been convicted.

Subsequently, the Superintendent received a call from the Department of Agriculture and a follow up letter in May, 1985, advising him that both Appellant and her husband had pleaded guilty to criminal charges before the Federal District Court and that the Department of Agriculture was requesting a reimbursement from the Local Board in the amount of One Thousand Nine Hundred Sixty Three and 32/100 Dollars (\$1,963.32) for illegally claimed costs in 1983. Based upon that information, the Superintendent instructed the personnel director to ask for Appellant's resignation and the personnel director did so. When the resignation was not forthcoming, the Superintendent began the termination process.

Appellant was provided a hearing on August 12, 1985. The hearing was held with regard to charges by the System that the Appellant was guilty of immorality and of being convicted of a crime involving moral turpitude.

At the hearing, the evidence showed that Appellant entered into a plea agreement in which she agreed to plead guilty to charges of "knowingly and willfully misapplying program benefits or property derived from benefits the amount of said benefits or property being in excess of \$200.00." The plea agreement provided that, if the Court was justified in entering a conviction for a misdemeanor rather than the felony charge, the attorney for the government would not object. The specific facts which came forth in the hearing were that Appellant took, for her personal use, some twelve (12) to twenty-five (25) steaks which were purchased with funds from the Program. The steaks supposedly were left over after being purchased by another staff member for an end of the year staff party which never materialized.

There was some conflict in the testimony concerning what the probation officer told the Superintendent in July, 1984. Appellant maintained that the Superintendent was told that both Appellant and her husband had entered guilty pleas. The Superintendent, however, testified that he did not understand that Appellant was found guilty. The Superintendent also testified that the probation officer said that the Superintendent would be informed of the results of the hearing, but the probation officer failed to make any further contact.

The Local Board issued its decision finding unanimously that Appellant was guilty of immorality and voted 5 to 2 in favor of termination, the majority reasoning that "conviction of misapplication of program benefits in a school sponsored activity rendered [Appellant] unsuited for continued employment as a business education teacher." This appeal to the State Board of Education was filed on September 6, 1985.

PART III

DISCUSSION

The sole issue to be decided on appeal is whether the Local Board is estopped from terminating Appellant because there was no intervening act on her part justifying termination after renewal of her 1985-86 contract and before her termination. Appellant contends that since she entered her plea of guilty on July 27, 1984, the Superintendent was told of her plea of guilty by the Probation Officer on July 30, 1984, she was actually sentenced on August 30, 1984, and nothing has occurred since her contract renewal on April 2, 1985, her contract cannot now be terminated. Appellant contends that the contract renewal caused her not to seek employment elsewhere and, thus, she relied upon the contract renewal to her detriment so that the Local Board is now estopped from relying upon the conviction as a basis for termination.

As Appellant points out in her brief, the State Board of Education has previously recognized the principle of equitable estoppel in Moore v. Bibb County Bd. of Ed., Case No. 1981-43. In that case, the State Board of Education took the position that, where a local board of education had issued a letter of reprimand to a teacher and told the teacher that no further action would be taken if the teacher made restitution for his offense, then the local board was estopped from later terminating the teacher when the teacher entered a guilty plea for the same offense.

In Moore, the decision was specifically based upon the local board's actual knowledge of the teacher's conduct. Additionally, the decision in Moore relied upon the conclusion that the Local Board had punished the teacher, the Local Board had required the teacher to make restitution, and the teacher had made restitution relying on the Local Board's promise not to take further disciplinary action. Such facts clearly do not exist in the present case. First, no facts exist to show the Local Board, as opposed to the Superintendent, was aware of the Appellant's misconduct or conviction. Secondly, Appellant had not previously been punished by the Local Board or the Superintendent for the misconduct. Finally, Appellant did not take any action based upon promises made by the Local Board not to discipline her further, because no such promises were made.

In the instant case, the Superintendent testified he had heard Appellant had not been convicted. While the probation officer testified he had informed the Superintendent that a plea had been entered and that Appellant would be awaiting sentencing, that does not mean the Superintendent had knowledge of Appellant's conviction. The Superintendent testified he did not understand that Appellant had been convicted but that he would be notified when the matter was completed. The Superintendent had questioned the Department of Agriculture numerous times over the course of the year and had been told to await the results of the investigation. It was not unreasonable for him to believe that delays in the results were continuing. Additionally, the Superintendent should not be expected to begin non-renewal proceedings based upon statements made to him by a probation officer. While it is true the Superintendent could have found out about the conviction sooner had he requested the information from the Court, he had no real reason to make such a request. He had been continually told that the Department of Agriculture would inform him of the results of the investigation by formal notice. The Hearing Officer, therefore, concludes that the Local Superintendent did not know of Appellant's conviction until he was notified in May, 1985.

Even if the Superintendent had been aware, or should have been aware, of the conviction, the Local Board would still be entitled to take the termination action since it was not knowledgeable about the conviction prior to the renewal. Under

O.C.G.A. §20-2-290 and §20-2-940, final decisions on employment, nonrenewals and termination of teachers are to be made by the local board. In this case, the Local Board had the authority to make the final decision and there was no evidence to show that the Local Board had knowledge of Appellant's conviction prior to Appellant's 1985-86 contract renewal.

For the principle of equitable estoppel, espoused by Appellant, to warrant reversal of the Local Board's decision, knowledge of Appellant's conviction or misconduct must be attributable to the Local Superintendent and the Local Board. However, because such knowledge is not attributable to the Superintendent or Local Board, the principle of equitable estoppel does not apply under the facts of this case.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion that the principle of equitable estoppel does not apply and the Local Board properly terminated Appellant's contract. The State Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.



L. O. BUCKLAND
STATE HEARING OFFICER