

STATE BOARD OF EDUCATION

STATE OF GEORGIA

NINA CHILDS,

Appellant,

v.

**BIBB COUNTY:
BOARD OF EDUCATION,**

Appellee.

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CASE NO. 1990-13

DECISION

PART I

SUMMARY

This is an appeal by Nina Childs (“Appellant”) from a decision by the Bibb County Board of Education (“Local Board”) to terminate her teaching contract after a hearing tribunal composed by the Professional Practices Commission (“PPC”) found that there was sufficient evidence to discipline her because of other good and sufficient causes. Appellant maintains that she was denied due process. We sustain the decision of the Local Board.

PART II

BACKGROUND

Appellant was serving as a counselor at the Local Board’s Southwest High School. During 1985, the administration, in cooperation with Charter Lake Hospital, instituted a Life Skills program. The program was designed to assist troubled students with life-coping skills. In order to provide an incentive to the students, the administration agreed to grant the students a one-third-unit credit. Initially, the one-third-unit credit was to be granted in health, citizenship, or independent studies (any course selected by the student who attended). Later, one-third unit of credit was to be offered in psychology. The program operated during the summer months and was free of charge to the students. Appellant was selected as the first director of the program and was compensated by charter Lake Hospital at a rate determined by her salary paid by the Local Board.

During September, 1989, a standards evaluation team (“Standards Team”) from the Georgia Department of Education performed an audit of the records at Southwest High School. The Standards Team found that the grades of a significant number of students had been altered without proper authorization. The Standards Team notified the Local Superintendent,

and he ordered an investigation. When the investigation was completed, Appellant was charged with being responsible for the unauthorized grade changes because the changed grades occurred for students who had attended the Life Skills program. The Local Superintendent recommended Appellant's dismissal. Appellant demanded a hearing and the Local Board requested the Professional Practices Commission to establish a hearing tribunal to conduct the hearing, make findings of fact, and present a recommendation.

The PPC Tribunal conducted the hearing on January 29 and 30, 1990. At the conclusion of the hearing, the Tribunal made findings of fact, conclusions of law, and a recommendation. The Tribunal's findings were:

(Some of the following are paraphrased or summarized)

1. Appellant was employed as the Director of the Life Skills program; her service in the Bibb County Public Schools has been exemplary and her evaluations consistently excellent.
2. In 1985, Appellant met with Dr. David Brotherton, Assistant Superintendent in charge of Secondary Education for the Bibb County Public Schools to implement the Life Skills program in cooperation with Charter Lake Hospital.
3. The Life Skills program was to offer one- third unit credit; Dr. Brotherton approved the one-third-unit credit.
4. Credit was available in the areas of health, citizenship and independent study (in which the student could apparently name the area wherein credit was to be granted).
5. The course outline was later changed to reflect a one-third-unit credit in the area of psychology for attending the Life Skills program.
6. The Life Skills program was never officially approved by the Bibb County Board of Education, yet both the administration and the Bibb County Board of Education were involved and associated with the program.
7. The actual operation of the program developed into a mechanism by which students who had failed academic subjects during the regular school year could raise their failing grades to passing grades and hence earn academic credit for those academic subjects.
8. Appellant did in fact institute, foster, maintain and help evolve a policy and practice by which students who attended the Life Skills program at Charter Lake Hospital could secure passing grades in academic subjects which had been failed during the regular school year.

9. Appellant's actions were not for her own private gain, but were intended by her to promote and encourage troubled students and Appellant's over-zealousness for her own program caused her to lose sight of rules and procedures governing the operation of the public schools.
10. There were a combination of failures on the part of various school officials, including school principals, registrars, and teachers, and this combination of failures created an environment wherein Appellant's over-zealousness for her program could allow rampant grade changes in the permanent records of students without proper or adequate administrative controls.
11. Bibb County had a procedure in place by which a student's grade could be changed, but the procedure was not adequately detailed and was followed neither by the school's principal, counselors, registrars, nor teachers.
12. A number of grade changes were made outside of normal and regular procedures and without proper authorization and documentation; these changes were concentrated among students who had attended the Life Skills program.
13. Respondent admitted that she had informed a number of students and their parents that some teachers might, in exchange for the student's attending the Life Skills program, offer additional credit to the student in the academic subject, which had been failed, by the student.
14. Although Appellant did not direct this unprofessional conduct (of changing grades by teachers] on the part of teachers (by advising that students had done make-up work during the summer when in fact no such work had been done), Appellant was well aware that such activity was going on and that students were receiving academic credit for their attendance at the Life Skills program and that this academic credit was being awarded to the students under false and misleading circumstances.
15. During the summer of 1989, a number of students also received credit in academic subjects which they had failed during the regular school year rather than receiving the one-third unit credit in psychology as indicated on the course outline.
16. Appellant did authorize and direct the registrars to make the grade changes in question by furnishing them a written list of grades to be changed and the courses in which students were to be given academic credit.
17. There was a total lack of administrative control in the area of grade changes.

18. The School System carried the burden of proof required to establish by a preponderance of the evidence that ‘other good and sufficient cause’ exists so as to authorize imposition of disciplinary action upon Appellant.

The PPC Tribunal recommended that Appellant should be suspended without pay for 60 working days. On March 27, 1990, the Local Board voted to adopt the findings and conclusions of the PPC Tribunal, but decided to accept the recommendation of the Local Superintendent to dismiss Appellant. Appellant then filed a timely appeal with the State Board of Education.

PART III

DISCUSSION

Appellant first argues that the Local Board denied her due process by terminating her because she was following a practice that was acceptable within the school system without first giving her fair warning that the practice was unacceptable. The Local Board argues that this issue was not raised before the Local Board and cannot be raised for the first time on appeal.

It is a well-established rule that issues not raised before a local board cannot be raised for the first time on appeal. See, e.g. Sharpley v. Hall County Board of Education 251 Ga. 54 (1983). Appellant argues that the defense was available only after the PPC Tribunal made its finding that the system followed by Appellant was pervasive. Notwithstanding Appellant’s argument, Appellant could have raised the defense before the PPC Tribunal, and subsequently before the Local Board. We will not, therefore, consider Appellant’s claim that she was denied due process because she did not receive fair warning.

Appellant argues that she is the “scapegoat”, and it is constitutionally improper to selectively enforce sanctions against her when the PPC Tribunal found that the principal, the registrars, and other teachers were involved in the process. In its conclusions, the PPC Tribunal made the following statement:

Other school employees, including the principal and former principal of Southwest High School, who allowed this environment to exist, including teachers who signed authorizations for grade changes under false pretenses and providing false information to school registrars, and including registrars who failed to follow established procedures and standards in the keeping and posting of student records, all contributed to this series of events and have received no disciplinary action. Appellant did not raise this issue before the Local Board. In addition, although the record indicates that only one other employee was disciplined (another counselor received a 30-day suspension), there is nothing in the record to indicate that Appellant was the only one the Local Board would discipline.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board is authorized by statute to terminate Appellant and that Appellant has not raised any issues that require reversal of the Local Board's decision. The Local Board's decision is, therefore, SUSTAINED.

This 9th day of August, 1990.

Mr. Carrell and Mr. Sessoms were not present.

Larry A. Foster
Vice Chairman For Appeals