

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GLORIA DUNCAN,	:	
	:	
Appellant,	:	
	:	CASE NO. 1996-10
vs.	:	
	:	DECISION
CLAYTON COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

**PART I
SUMMARY**

This is an appeal by Gloria Duncan (Appellant) from a decision by the Clayton County Board of Education (Local Board) to terminate her contract as a principal after a tribunal from the Professional Practices Commission (PPC) found that she had compromised the security of standardized tests. Appellant claims that the Local Board’s decision was arbitrary and capricious because the PPC Tribunal recommended against terminating her contract. In addition, Appellant claims there were errors in the conduct of the hearing. The Local Board’s decision is sustained.

**PART II
BACKGROUND**

During the 1994-1995 school year, Appellant, who was then principal at North Clayton Middle School, was concerned about raising the standardized test scores of the students at North Clayton Middle School. Before the Iowa Test of Basic Skills (ITBS) was administered in the spring of 1995, Appellant asked the language arts teachers to attend a meeting in her office. During the meeting, Appellant produced a list of words she had copied from the ITBS and asked the language arts teachers to review the words and be sure their students were familiar with the words. One of the language arts teachers took the list, added some additional words, and copied the listing for the other teachers. The teachers incorporated the words in their studies as the students prepared to take the ITBS.

Later in the spring, Appellant called all the teachers together shortly before the Curriculum Based Assessment (CBA) was to be given. Copies of the CBA were passed around to the teachers and they were asked to be sure they covered all the areas of the test before it was given.

Two of the language arts teachers, who Appellant had problems with, reported the incidents to the PPC. The PPC launched an investigation and determined that a hearing should be held. On December 1, 1995, the Local Superintendent wrote to Appellant and told her that she was charged with unprofessional conduct involving the administration of standardized tests, and that a hearing would be held on the charges. The Local Superintendent provided a list of the

witnesses expected to be called and a summary of their testimony. On the day before the hearing, the attorney for the Local Board told Appellant's attorney that another witness, Dr. Larry Parker, would be testifying even though his name had not been placed on the original list of witnesses.

The hearing was held on December 14-15, 1995. Before the hearing started, Appellant excepted to Dr. Parker testifying because he had not been identified ten days before the hearing. The hearing officer overruled the objection but held that Dr. Parker could not testify until the second day of the hearing and that Appellant had an opportunity to question Dr. Parker before he gave his testimony.

After the hearing, the PPC Tribunal found that test security procedures were lacking in Clayton County and at North Clayton Middle School. The Tribunal found that Appellant's conduct was inappropriate and unprofessional because she provided a list of the vocabulary words from the ITBS to her language arts teachers and permitted them to teach the words to their students in preparation for the test, which resulted in an increase in the test scores at North Clayton Middle School. The Tribunal also found that during the administration of the mathematics portion of the ITBS, Appellant discussed a particular problem that some of the students were having trouble with and instructed the teachers to make sure the students who had not taken the test were familiar with the concepts contained in the problem. The Tribunal found such action to be unethical, unprofessional, and in violation of well-established testing security procedures that Appellant knew.

The PPC Tribunal concluded that Appellant had violated Standards 1 and 2 of the Professional Practices Commission, which provide that it is unethical to disregard generally recognized stands of assessment, treatment, instruction or supervision of students, and that an educator should not engage in any conduct involving dishonesty, fraud, deceit, or misrepresentation in the performance of professional duties. The Tribunal found that Appellant was a capable principal who had brought improvements to North Clayton Middle School. As a consequence, the Tribunal recommended that Appellant be suspended for thirty days without pay.

On February 12, 1996, the Local Board adopted the findings of the PPC Tribunal, but voted to terminate Appellant's contract. Appellant then filed a timely appeal with the State Board of Education.

PART III DISCUSSION

On appeal, Appellant claims that the Local Board's decision was arbitrary and capricious because it voted to terminate her contract when the PPC Tribunal recommended suspension without pay for thirty days. Appellant argues that the Tribunal's conclusion that termination was too harsh and not in the best interests of the school system are binding on the Local Board in the absence of any contrary findings by the Local Board. In a similar case, *Rabon v. Bryan Cnty. Bd. of Educ.*, 173 Ga. App. 507, 326 S.E.2d 577 (1985), a local board did not make separate findings of fact when it voted to terminate a principal's contract in spite of a PPC recommendation of a sixty-day suspension without pay. The Court held that a local board is not required to follow the recommendation of the PPC and there was no evidence that the local board relied upon any other facts than those found by the PPC.

In the instant case, the PPC Tribunal found that Appellant acted unprofessionally and violated two standards of the Professional Practices Commission. The Tribunal's statement that it was not in the best interests of the school system to terminate Appellant's contract was merely a conclusion by the Tribunal, with which the Local Board was free to disagree. As in *Rabun*,

there is no evidence that the Local Board relied on any facts other than those found by the Tribunal. The State Board of Education, therefore, concludes that the Local Board's decision was not arbitrary or capricious and it acted within its authority in terminating Appellant's contract.

Appellant next contends that she was denied due process because Dr. Larry Parker was permitted to testify even though his name was not submitted as a witness until one day before the hearing. O.C.G.A. § 20-2-940(b) requires the names of known witnesses to be provided to a principal at least ten days before the date set for a hearing. The section also provides that u[t]he names of new witnesses shall be given as soon as practicable." O.C.G.A. § 20—2-940(B)(2). In the instant case, Dr. Parker's name was inadvertently omitted from the initial list of witnesses and it was not until the day before the hearing that Appellant became aware that Dr. Parker would be a witness. When the hearing began, Appellant objected to any testimony from Dr. Parker. The hearing officer overruled the objection, but ruled that Dr. Parker could not testify on the first day and Appellant was given an opportunity to privately question Dr. Parker before he gave any testimony.

Dr. Parker testified about the need to keep standardized tests secure to provide an accurate measure of the overall ability of students. The Local Board argues that Dr. Parker's testimony was cumulative, Appellant was given an opportunity to conduct discovery, and Appellant has not shown any harm that resulted.

There is a clear requirement for the names of known witnesses to be given at least ten days before a hearing. The statute, however, also provides that additional names can be disclosed at a later time. Since there is not an absolute prohibition against later disclosure, it is within the discretion of the hearing officer whether a later-disclosed witness should be permitted to testify. In the instant case, where the witness' testimony concerned broad foundational information and the hearing officer took steps to alleviate any harm by delaying the testimony and allowing discovery, the State Board of Education concludes that the hearing officer did not abuse his discretion in allowing Dr. Parker's testimony.

Appellant next contends that the hearing officer erred in not permitting her to introduce the testimony of some parents who would have provided derogatory information concerning two teachers who initially reported the events to the Professional Practices Commission and who were principal witnesses at the hearing. The hearing officer ruled that the testimony was not relevant. Appellant claims that the testimony was relevant because it went to the credibility of the witnesses.

The hearing officer properly excluded the testimony about the problems the parents had with the accusing teachers. As a general rule, a witness may be impeached by evidence of bad character, which requires a specific foundation. O.C.G.A. § 24-9-84. In the instant case, Appellant only attempted to show that the parents had problems with the accusing teachers; the parents were not asked about the bad character of the accusing teachers. Appellant testified about the problems she had with the accusing teachers. The PPC Tribunal, therefore, had evidence before it that permitted it to determine the credibility of the two teachers. Additionally, there was no evidence given or offered that a third accusing teacher had any problems with Appellant.

PART IV DECISION

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant was not denied due process, the hearing officer did not abuse his discretion, and the Local Board's decision was not arbitrary or capricious.

Accordingly, the Local Board's decision is, therefore,

SUSTAINED.

This 11th day of July, 1996.

Mr. Brinson, Mr. Sessoms, Mr. McGlamery, and Mr. Floyd were not present.
The seat for the eleventh District is vacant.

J. T. Williams, Jr., Chairman
State Board of Education