

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JEAN BALTHROP,	)	
	)	
Appellant,	)	
	)	CASE NO. 1983-20
v.	)	
	)	
THE BOARD OF PUBLIC	)	
EDUCATION FOR THE CITY	)	
OF SAVANNAH AND THE	)	
COUNTY OF CHATHAM,	)	
	)	REPORT OF
Appellee.	)	HEARING OFFICER

PART I  
SUMMARY OF APPEAL

This is an appeal by Jean Balthrop (hereinafter "Appellant") from the decision by The Board of Public Education for the City of Savannah and the County of Chatham (hereinafter "Local Board") which suspended her without pay for approximately thirty days and reassigned her to another position from her position as principal. The appeal is based on Appellant's contentions that she was denied due process because the Local Board did not accept the findings of a Professional Practices tribunal which found that there was insufficient evidence to sustain the charges made against Appellant. The Hearing Officer recommends reversal of the Local Board's decision.

PART II  
FINDINGS OF FACT

On November 5, 1982, Appellant received notice that she was suspended with pay until an investigation could be completed concerning certain allegations against her, but the notice did not set forth any charges. On November 23, 1982, the Local Superintendent notified the Local Board that he would seek to terminate Appellant. The Local Superintendent also gave written notice to Appellant that she was being charged with misconduct in that she:

1. Knowingly violated the due process rights of special education students;
2. Knowingly violated the provisions of Chapter I by placing an ineligible student in the Chapter I program;

3. Failed to comply with directives of her superiors, and
4. Violated the code of ethics prescribed by the Local Board for professional educators.

The Local Board requested a tribunal from the Professional Practices Commission to hear the matter after Appellant requested a hearing. The hearing before the Professional Practices Commission tribunal was held on February 24, 25 and 26, 1983.

Appellant served as a principal of the Charles Ellis Elementary School, a position she had held for six years. The charges stemmed from a change made in the "Chapter I" program during the summer of 1982. Appellant, as well as other principals, was notified that the Local System would only provide Chapter I services for those students who scored from the eleventh to the fortyninth percentile on the "CTBS." Appellant had already completed the grouping of her students for the following school year before she was notified of the change.

Appellant and the other principals had difficulty rescheduling their students in order to comply with the program changes. Appellant's problems were compounded by the fact that two additional grades had been added to her school, she had a shortage of four teachers at the beginning of the year, and one of her two CEP teachers was absent because of maternity leave. As a result, one of her fourth grade classes contained forty-five students. A series of meetings and a flow of memoranda ensued, with Appellant attempting to obtain relief from program requirements in order to accommodate certain of the students. Appellant was told she had to comply with the changed requirements and she agreed, but subsequent checks of the student records led to the charges made by the Local Superintendent.

The Professional Practices Commission tribunal found that:

1. On September 9, 1982, Appellant met with her immediate supervisor, the director of programs and projects development, and the Chapter I coordinator to discuss the fact that Appellant had not fully complied with the Chapter I project guidelines. Appellant was told about the requirements of the Chapter I guidelines and told that she had to adhere to them unless an amendment to the guidelines was granted. Appellant urged the Chapter I coordinator to ask for an amendment for certain fourth grade students in order to meet the scheduling problems.

2. On September 20, 1982, a memorandum was prepared by the three administrators which summarized the September 9, 1982 meeting and directed Appellant to comply with the Chapter I guidelines. Appellant responded on September 22, 1982, and said that she would comply, but she again asked for an amendment and requested the assistance of the Chapter I coordinator to suggest

a way to serve the children who fell below the eleventh percentile.

3. On September 24, 1982, the associate executive director of elementary schools and the Chapter I coordinator visited Appellant's school and found that certain students were improperly placed. Appellant had these students rescheduled at that time. All of the scheduling problems known to Appellant, her supervisors, and the support personnel were resolved and Appellant was in compliance with the Chapter I guidelines.

4. On October 25, 1982, Appellant telephoned the executive director of the exceptional child program to see if a particular child was eligible for Chapter I services. The executive director told Appellant that the child was not eligible and that she needed to call the person in charge of scheduling of testing in order to find out about scheduling a restaffing for the purpose of changing the student's individualized educational program ("IEP"). The person in charge of testing informed Appellant that all she needed to do was to change the Student's IEP with the parent's consent; that when the amendment to the IEP was prepared, Appellant needed only to obtain the parent's consent to the modification. On October 29, 1982, Appellant had the student's IEP amended and she wrote to the student's parent on November 1, 1982 and asked the parent to sign the amended IEP to indicate consent. The parent signed the amended IEP on November 4, 1982.

5. On October 28, 1982, one of the Chapter I teachers in Appellant's school called the Chapter I coordinator and informed her that the Student's IEP had been amended so the student would be eligible for Chapter I services. The same teacher called the Chapter I coordinator again on November 4, 1982, and informed her that the student would be entering the Chapter I program on November 5, 1982.

6. The Chapter I coordinator informed her husband, who was the executive director of the exceptional child program, that the student's IEP had been changed. The executive director requested Appellant's immediate supervisor to pick up the student's IEP from Appellant's school. The IEP was obtained, and the executive director and others determined that the IEP had been improperly amended. The executive director conferred with the Local Superintendent, who then made the determination to terminate Appellant without discussing the matter with Appellant to obtain her side of the story.

7. A subsequent examination of the records of the students revealed that Appellant had caused the IEPs of two other students also to be changed with the consent of the student's parents. The amendments were made without a placement committee considering the changes, but they were made based upon the advice Appellant had received from others.

8. Appellant did not place, or cause to be placed, any children into the Chapter I program who were ineligible. Additionally, she did not permit students to receive both special educational services and services under the Chapter I program.

9. Appellant was charged with gratuitously providing another student with special educational services. Appellant, however, did not intend to bypass the procedures of Public Law 94-142 or gratuitously provide special educational services to the student.

10. There was conflicting evidence Appellant caused twelve other students to be improperly placed in Chapter I programs, and whether the students were improperly receiving Chapter I services, but, Appellant did not improperly cause or place the students in Chapter I programs.

11. Appellant's immediate supervisor directed her to comply with the Chapter I guidelines and to adhere to the approved project. Appellant intended to comply and made efforts to cause her school to be in compliance with the changes in the Chapter I program.

12. Appellant did not violate the code of ethics for professional employees of the local school system, and at all times acted in conformity with the professional code of ethics.

Based upon these findings, the Professional Practices Commission tribunal concluded that:

1. The IEPs of three students had been improperly changed, but Appellant did not make the changes in deliberate violation of the rights of the students;

2. The burden of proof was not carried to establish that: Appellant gratuitously provided special educational services to a student; ineligible students were knowingly or intentionally placed in Chapter I programs; students were improperly retested in order to enable them to receive Chapter I services; Appellant willfully or intentionally failed to comply with the directives of her supervisor; Appellant knowingly violated the provisions of the code of ethics for professional employees, and there was good and sufficient cause to terminate Appellant's contract for employment.

The Professional Practices Commission tribunal, therefore, determined that there was insufficient evidence to support any of the charges made against Appellant. The tribunal recommended that Appellant be reinstated in her position as principal of the Charles Ellis Elementary School.

The report of the Professional Practices Commission was made on May 19, 1983. When the Local Board received the report, it issued its own decision, with its own findings of fact and conclusions of law. The Local Board found that:

1. Appellant permitted the IEP of a student to be amended without adhering to the requirements of law and without prior parental consent and thereby violated the due process rights of the student.

2. Appellant also permitted the IEPs of two other students to be altered so that "the due process of [the students] was violated since the same was done without convening of a Placement Committee and was done without the prior consent of the parent in issue."

3. Two students were receiving CEP services which duplicated Chapter One [sic] services and Appellant was responsible for the duplication of services in her position as principal.

4. The special education teacher was directed by Appellant to evaluate a student without referring the student to her court-ordered area school.

5. Appellant allowed twelve students to be placed in Chapter One [sic] programs when they were not eligible for such services, and Appellant was either aware, or responsible for being aware, of the violation.

6. Appellant failed to follow the directives of her supervisor, and while communicating to her superiors one course of action, she followed another course in order to circumvent the Chapter One [sic] and Special Education guidelines.

7. Appellant continued to disobey and failed to comply with the directives of the September 20, 1982 memorandum, and such failure was willful.

8. Appellant's position regarding the obtaining of an amendment was groundless and irrational.

9. Appellant ignored the advice of her coordinator and the directives of her supervisor and was determined to disobey directives such that her actions constituted insubordinate behavior.

10. Appellant acted unprofessionally, deviated from the professional standard of her peer principals, caused students to receive duplication of services, and was adamant in taking a position that was antagonistic to her superiors and the policy of the Local Board and was defiant to her superiors.

The Local Board concluded that Appellant was guilty of all charges, and decided that Appellant would be suspended for the balance of the fiscal year without pay, and reassigned for the next school year to a position other than as principal of Charles Ellis Elementary School.

The appeal to the State Board of Education was made on June 13, 1983.

### PART III CONCLUSIONS OF LAW

The appeal was made on the grounds (1) the decision of the Local Board was made in an arbitrary and capricious manner by disregarding the report of the hearing tribunal and the evidence presented before the hearing tribunal; (2) the decision is void because Appellant's due process rights were violated during the Local Board's deliberations because the Local Superintendent and the attorney who presented the case against Appellant were present and participated in the deliberations; (3) the Local Board's decision constitutes an ultra vires act, and (4) the proceedings were void because Appellant was suspended without being informed of any grounds of suspension.

Appellant argues that the Local Board did not have legal authority to go behind the findings of the Professional Practices Commission tribunal and make its own findings of fact and conclusions of law. The Professional Practices Commission tribunal was acting as the trier of fact, and the verdict on the facts is the exclusive province of the trier of fact. Appellant further contends that the Local Board's rejection of the tribunal's findings has the effect of conducting a secret hearing which Appellant was unable to attend.

The Local Board argues that it did not reject the findings of the Professional Practices Commission tribunal, but, instead, adopted the main points of the tribunal's findings of fact and made its own conclusions of law. The findings of fact made by the Local Board were predicated upon the findings of fact made by the tribunal.

It is clear by any examination of the findings of fact of the Professional Practices Commission tribunal and the Local Board that the Local Board went far beyond merely adopting the findings of fact made by the Professional Practices Commission tribunal, or that its findings were predicated upon the findings of the tribunal. The Local Board's findings of fact are directly contrary to the findings of the tribunal, or the Local Board found facts that the tribunal did not find.

For example, the tribunal found that Appellant amended a student's IEP in accordance with the advice she had received from others, but the Local Board found that Appellant permitted the IEPs to be amended without adhering to the requirements of law and thereby violated the due process rights of the student. The Local Board also found that Appellant allowed twelve students to improperly receive Chapter I services, but the tribunal weighed the evidence presented and found that Appellant did not improperly place or cause the students to be placed so they would receive Chapter I services.

The State Board of Education has previously held that a local board of education does not need to follow the recommendation of a hearing tribunal if the facts found by the hearing tribunal support the decision of the local board. See, Poland v. Cook Cnty. Bd. of Ed., Case No. 1977-4. The State Board of Education has also decided that the basic findings of the Professional Practices Commission tribunal "are binding on a local board of education, but the determination of whether the findings support the charges is a decision which must be made by the local board of education...." Beard v. Laurens Cnty Bd. of Ed., Case No. 1977-14.

The Hearing Officer is of the opinion that the Local Board exceeded its authority by rewriting the findings of facts so that they were in conflict with the findings of the Professional Practices Commission tribunal. The Local Board was bound by the facts as they were found by the tribunal, and the Local Board's decision had to be based upon those facts.

The Local Board argues that the Professional Practices Commission tribunal exceeded its authority because the tribunal made ultimate findings rather than basic findings, i.e., the tribunal made findings which contained mixed questions of law and fact and thereby invaded the province of the Local Board. To the extent the Professional Practices Commission tribunal concluded that the findings did not support the charges, then the tribunal was making determinations which involved mixed questions of law and fact. The tribunal, however, did not make any such determinations in its findings of fact. All of the conclusions regarding the sufficiency of the evidence were set forth in the tribunal's conclusions of law. The Hearing Officer, therefore, concludes that the tribunal did not invade the province of the Local Board in its findings of fact. Based upon a review of the facts found by the tribunal, the Hearing Officer concludes that none of the facts support the charges made against Appellant.

The Professional Practices Commission tribunal also found that Appellant was improperly suspended because no charges were initially made against her when she was notified of the suspension, but that Appellant had waived any claims she had

because notice was given before the objections were raised. On appeal, Appellant claims that the entire proceedings were void because she was improperly suspended. The Hearing Officer concludes that, since Appellant received notice of the charges, a hearing was held on the charges, and Appellant was suspended with pay, any error committed initially was harmless error and Appellant was not denied due process. The proceedings, therefore, were not void because of the improper suspension.

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 the Local Board was bound by the findings of the Professional Practices Commission tribunal, and that such findings do not support the charges made against Appellant. The Hearing Officer, therefore, recommends that the decision of the Local Board be reversed.

*L. O. Buckland*  
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L. O. BUCKLAND  
State Hearing Officer