

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: DOUGLAS BRANTLEY

CASE NO. 1984-7

O R D E R

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

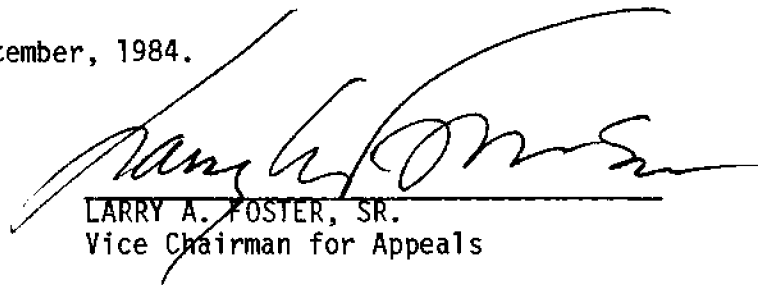
DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Special Master are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the recommendation of the Professional Practices Commission is hereby adopted, and

DETERMINES AND ORDERS, that the teaching certificate of Douglas Brantley is hereby revoked.

Mr. Lathem was not present.

This 13th day of September, 1984.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DOUGLAS M. BRANTLEY, JR.	:	
	:	
Appellant	:	
	:	CASE NO. 1984-7
vs.	:	
	:	
HOWARD B. STROUD,	:	
Chairman, Professional	:	
Practices Commission,	:	REPORT OF
	:	SPECIAL MASTER
Appellee.	:	

PART I

SUMMARY OF EXCEPTIONS

This is a report on the exceptions filed by Douglas M. Brantley, Jr. (hereinafter "Appellant") from a report and recommendation by the Professional Practices Commission to the State Board of Education which found Appellant had committed an act involving both moral turpitude and personal conduct detrimental to the health, welfare, discipline, or morals of pupils and recommended revocation of his teaching certificate. The exceptions primarily relate to the procedure followed by the Professional Practices Commission. The Special Master recommends that the State Board of Education adopt the findings and recommendations of the Professional Practices Commission.

PART II

FINDINGS OF FACT

Appellant was a teacher and a coach of a girls' basketball team. He was charged with engaging in sexual intercourse on at least two occasions with a seventeen year old female student who was a member of the girls' basketball team he coached. A hearing officer for the Professional Practices Commission conducted a pre-trial conference on February 27, 1984 at which Appellant asserted a right to pre-trial discovery and moved to dismiss because the Professional Practices Commission had not promulgated rules and regulations governing the hearing. The Hearing Officer denied the motion for pre-trial discovery on his finding that the Professional Practices Commission did not have the authority to grant pre-trial discovery. He denied the motion to dismiss on his finding that the Hearing Officer, as agent for the Professional Practices Commission, had the authority to establish rules and regulations not inconsistent with State law for the conduct of the hearing.

The Hearing Officer then proceeded to hold the hearing the next day. At the hearing, substantial evidence was introduced in the form of testimony that Appellant had sexual intercourse with the Student on two occasions. On one of these occasions, Appellant and the student were discovered engaged in sexual intercourse by the student's step-father, who had unexpectedly returned home. Further testimony was introduced that Appellant

admitted he had sexual intercourse with the student. This admission was made to the Director of High School Personnel in Appellant's school system when the Director confronted Appellant with the allegation. Appellant was called to the stand and refused to testify on the basis of his right not to incriminate himself. His refusal not to testify was commented on by opposing counsel in opposing counsel's closing statement.

Based upon the evidence presented, the Professional Practices Commission Tribunal concluded Appellant committed an act or acts constituting moral turpitude or personal conduct which is detrimental to the health, welfare, discipline or morals of pupils. The tribunal then unanimously recommended that Appellant's teaching certificate be revoked.

PART III

CONCLUSIONS OF LAW

Appellant first contends that the Professional Practices Commission deprived him of his constitutional right to due process by prosecuting him while failing to promulgate substantive and procedural rules and regulations. Under O.C.G.A. § 20-2-282, the State Board of Education is authorized to provide for revoking or denying certificates for good cause after investigation is had and notice and a hearing is provided the certificate holder. The State Board of Education has provided for revocation of certificates in State Board Policy GBBC. This policy provides the grounds for revocation of certificates and

includes the grounds which were used by the Professional Practices Commission to recommend revocation in this instance. Policy GBBC also provides for notice and a hearing to be provided by the Professional Practices Commission in light of the provisions of law found in the Professional Practices Commission Act (O.C.G.A. § 20-2-790 et. seq.) The State Board of Education, not the Professional Practices Commission, has the authority under Georgia law to revoke teaching certificates. The State Board of Education simply uses the Professional Practices Commission (set up as an independent body composed of members of the teaching profession), to provide the investigation, notice, and hearing required by O.C.G.A. § 20-2-282 and to meet due process requirements imposed by the Constitutions of Georgia and of the United States. After the hearing by the Professional Practices Commission, and after the recommendation to the State Board of Education is made, the State Board still gives teachers who are subject to the revocation proceeding, and the Appellant in this instance, a hearing before a Special Master with the right to submit briefs and argue orally concerning the recommendations of the Professional Practices Commission. The State Board of Education then has the opportunity to consider the record of the hearing before the Professional Practices Commission, their recommendation, the briefs of counsel, and the recommendation of the special master. Appellant has not objected to the proceedings before the State Board of Education but has

only objected to the proceedings before the Professional Practices Commission. The Special Master, therefore, concludes that the State Board of Education has, through the process discussed, given Appellant the notice and hearing required by O.C.G.A. § 20-2-282.

The next question is whether the proceedings afforded Appellant meet the requirements of due process which the State Board of Education is required to provide. The Hearing Officer for the Professional Practices Commission, in denying Appellant's motion to dismiss, concluded that he had the inherent authority to establish some rules and regulations by which to govern the hearing before the tribunal of the Professional Practices Commission. He adopted the rules of procedure governing civil trials in the Superior Courts of Georgia. Appellant was represented by counsel who was certainly familiar with those rules. Appellant admits in his brief he was afforded notice of the charges, the right to counsel, and the right to subpoena witnesses. He argues, however, he was not given a right to pre-hearing discovery, he was not given a witness list ten days prior to the hearing, and he was not given a summary of the evidence to be used against him. Appellant has not cited any authority in this jurisdiction requiring that he be given the right to pre-hearing discovery and has not cited any authority showing that the Professional Practices Commission or the State Board of Education has the authority to grant pre-hearing discovery. The Georgia Supreme Court has recently ruled, in Lansford v.

Cook, 252 Ga. 414 (1984), that the Professional Practices Commission did not have such authority. Appellant has cited no cases in this jurisdiction which hold that pre-hearing discovery is required in an administrative proceeding in order to meet due process. The Special Master is of the opinion that no such requirement is necessary to meet Appellant's due process rights. Appellant was given notice of the charges in sufficient detail for him to understand the charges made against him. The notice was also quite sufficient for him to understand the evidence which would be used against him and the witnesses who would testify. Appellant did not contradict the testimony presented. Thus, Appellant has failed to show how he has been harmed by any of the alleged errors. Further, the procedure followed by the Hearing Officer for the Professional Practices Commission gave Appellant every right granted in the hearing requirements under the Administrative Procedures Act (O.C.G.A. § 50-13-13). The Special Master, therefore, concludes that the hearing procedures followed, and the lack of rules and regulations, did not deprive Appellant of any due process rights.

Appellant further contends on appeal that opposing counsel's comment on Appellant's refusal to testify was a violation of his right to avoid self-incrimination under the Fifth Amendment to the United States Constitution. Appellant has been unable to cite any authority in this jurisdiction to support this contention. In Georgia, a negative inference may be drawn

in a civil case from the refusal of a defendant to testify. Simpson v. Simpson, 233 Ga. 17 (1974). The Special Master, therefore, concludes that Appellant's right to avoid self-incrimination was not violated.

Appellant's remaining contention is that his alleged conduct occurred subsequent to his taking military leave and after he had submitted his resignation to the school system. Appellant's brief admits that he was in the process of resigning and had not yet actually resigned. However, even had he completed the process of resignation, that would not warrant a reversal of the Professional Practices Commission's findings and recommendations nor prohibit the State Board of Education from concurring with those findings and recommendations. Appellant was not in the process of relinquishing his teaching certificate and the State Board, therefore, retains an interest in acts with which Appellant was charged and which occurred with a student over which he had supervision as a teacher. The Special Master, therefore, concludes that Appellant's actions had not deprived the State Board of Education from jurisdiction.

PART IV

RECOMMENDATIONS

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Special Master is of the opinion that there was evidence which supports the findings and recommendations of the Professional

Practices Commission tribunal and that Appellant's enumerations of error do not establish any basis for a rehearing. The Special Master, therefore, recommends that the State Board of Education adopt the recommendations of the Professional Practices Commission and revoke Appellant's teaching certificate.

L. O. Buckland

L. O. Buckland
Special Master