

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>NANCY REEL,</b>	:	
	:	
<b>Appellant,</b>	:	
<b>v.</b>	:	
	:	<b>CASE NO. 1992-34</b>
<b>COWETA COUNTY</b>	:	
	:	
<b>BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

**PART I**

**SUMMARY**

This is an appeal by Nancy Reel (“Appellant”) from a decision by the Coweta County Board of Education (“Local Board”) that adopted the findings and recommendation of a Professional Practices Commission (“PPC”) tribunal that sufficient cause existed to demote Appellant from the position of Director/Teacher in the Even Start Program to classroom teacher. The PPC tribunal’s recommendation was based upon a finding that there was an apparent conflict of interest in Appellant’s selection to the position of Director/Teacher because her sister was involved in the selection process and federal law prohibits any conflict of interest, or the appearance of a conflict of interest. Appellant claims on appeal that (1) the PPC violated her procedural due process rights by issuing its findings and recommendation more than thirty days after the conclusion of the hearing before the PPC tribunal; (2) the evidence does not support the finding that there was other good and sufficient cause to demote Appellant and the Local Board violated Appellant’s substantive due process rights by finding there was other good and sufficient cause, and (3) Appellant’s procedural and substantive due process rights were violated by having a member of the State Bar of Georgia act as the hearing officer for the hearing before the PPC tribunal. The Local Board’s decision is sustained.

**PART II**

**FACTUAL BACKGROUND**

In March, 1991, Betty Cariaco, Appellant’s sister and an employee of the Local Board, was asked to write for a federal grant for an Even Start Program. In the fall of 1991, the Coweta

County School System was awarded \$1,000,000 over a four-year period for an Even Start Program. On September 17, 1991, the School System posted a notice to all its employees to inform them that three positions were available in the Even Start Program.

Because she was the author of the grant application, the administration looked to Betty Cariaco for leadership and guidance in implementing the Even Start Program. As a consequence, Betty Cariaco became one of three interviewers of the applicants for the three positions in the Even Start Program. Appellant was one of the applicants and she was rated by her sister, Betty Cariaco.

The applicants were rated against a list of standardized questions posed by the three interviewers. At the conclusions of the interview process, the Local Superintendent asked for the names of the three highest ranking candidates. Appellant was one of the three.

The Local Superintendent appointed Appellant as the Director/Teacher and the other two applicants were appointed to the positions of Supervisor/Teacher, one in the audit program and the other in the early childhood program. The Local Superintendent made his selections based upon his perception that the three positions were co-equal and that Appellant would primarily be responsible for the administrative functions necessary to support the program. Appellant holds a T-4 certificate in middle school education and does not have any leadership certification and had never served in a leadership capacity.

Dissension arose among the three Even Start Program employees as Appellant assumed a control position under the guidance of Betty Cariaco, who viewed the Director/Teacher position as the leadership position in the program. In January, 1992, Carmella Scott, who held the position of Supervisor/Teacher in the audit program, made charges that there was racial discrimination in the selection of Appellant as the Director because Appellant was less qualified since she only had a T-4 certificate and Ms. Scott held an administrative certificate and had served as an assistant principal. Additionally, Ms. Scott charged that the School System had violated federal regulations in the appointment of Appellant to a position in the Even Start Program.

The federal regulation, 34 C.F.R. S 75.525, provides:

- (a) A grantee may not permit a person to participate in an administrative decision regarding a project if:
  - (1) The decision is likely to benefit that person or a member of his or her immediate family; and
  - (2) The person:
    - (i) is a public official; or
    - (ii) has a family or business relationship with the grantee.
- (b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is - or gives the appearance of being - motivated by a desire for a private financial gain for that person or for others.

In applying for the grant, the School System had given an assurance that it had a system to “prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.”

When he was presented with the federal regulation, the Local Superintendent decided that there was the appearance of a conflict of interest and that Appellant should be removed from her position because her sister was involved in the selection process. The Local Superintendent met with the Local Board on February 7, 1992, and the Local Board voted to transfer Appellant out of the Even Start Program because of the appearance of a conflict of interest. The Local Superintendent then met with Appellant and asked for her resignation. He also told her that since she was on an eleven—month contract, her salary would be continued for the remainder of the school year, and an attempt would be made to find a comparable position for her for the next year. Appellant accepted the Local Superintendent’s assurances and submitted her resignation from the position of Director/Teacher and assumed a position as Teacher/Home Bound for the remainder of the 1991-1992 school year.

On April 15, 1992, the Local Superintendent wrote to Appellant and told her that her administrative supplement would not be continued for the 1992-1993 school year. Appellant filed a request for a hearing under the provisions of O.C.G.A. § 20-2-940 to contest her demotion. The Local Board asked the PPC to conduct a hearing and make recommendations. The hearing before the PPC tribunal was held on July 31, 1992.

At the beginning of the hearing, the parties stipulated that the hearing officer was a disinterested member of the State Bar of Georgia and there were no objections to the hearing officer serving as such. Appellant’s attorney, however, registered an objection against the process used by the PPC to select hearing officers. The parties also stipulated that the tribunal would have no more than thirty days to complete its report and make recommendations.

On September 3, 1992, the PPC tribunal issued its report. The tribunal found that Betty Cariaco’s involvement with the selection process gave the appearance of a conflict of interest. The tribunal recommended that there was other good and sufficient cause to demote Appellant. On September 16, 1992, the Local Board adopted the findings and recommendation of the PPC tribunal. Appellant filed a timely appeal with the State Board of Education.

### **PART III**

#### **DISCUSSION**

Appellant claims she was denied procedural due process because the PPC tribunal issued its report more than thirty days after the hearing. Appellant argues that the time limits of O.C.G.A. § 20-2-940 are mandatory and the failure of the PPC tribunal to issue a report within thirty days requires reversal of the Local Board’s decision.

The PPC tribunal report was issued three days after the thirty days the parties agreed upon. The three-day delay by the PPC tribunal was harmless because it had no effect on Appellant’s status. Harmless error does not warrant reversal.

Appellant claims the evidence was insufficient to support the PPC tribunal's finding that other good and sufficient cause existed to demote her. Appellant argues that the tribunal based its finding on an appearance of a conflict of interest because of the involvement of Betty Cariaco in the Even Start selection process, but there was no evidence that suggested that either Ms. Cariaco or Appellant did anything improper in Appellant's selection as the Director/Teacher.

Appellant's arguments miss the point. It is immaterial whether either Ms. Cariaco or Appellant did anything improper, or were improperly motivated. The statute is directed to the avoidance of appearances of impropriety, which means that if the circumstances create any questions about propriety, or there is any possibility of impropriety, then an appearance of impropriety exists. Motivations and actions, therefore, do not have any bearing on the question. Thus, Ms. Cariaco, Appellant's sister, was involved in the process of hiring Appellant — this is enough to give the appearance of impropriety without anything more. The State Board of Education, therefore, concludes that there was evidence to support the PPC tribunal's finding consequences. Thus, despite Appellant's arguments, the PPC tribunal's findings must stand.

Appellant finally claims that the PPC's use of a disinterested member of the State Bar of Georgia denied her procedural and substantive due process. Appellant, however, did not cite any cases to support her position and did not cite any instances in the record to show that she was denied any rights. The State Board of Education, therefore, concludes that Appellant's claim is without merit.

#### **PART IV**

#### **DECISION**

Based upon the foregoing, the State Board of Education is of the opinion that there was good and sufficient cause to demote Appellant. The decision of the Local Board, therefore, is

**SUSTAINED.**

This 11<sup>th</sup> day of March, 1993.

Mr. Sears and Mr. Sessoms were not present.

Robert M. Brinson  
Vice Chairman for Appeals