**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| **CAROL PENLAND,** | : | |
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| **Appellant,** | : | |
| | : | **CASE NO. 1999-58** |
| **vs.** | : | |
| | : | **DECISION** |
| **COBB COUNTY** | : | |
| **BOARD OF EDUCATION,** | : | |
| | : | |
| **Appellee.** | : | |

Carol Penland (Appellant) has appealed the decision of the Cobb County Board of Education (Local Board) to suspend her without pay for 60 days after finding her guilty of unprofessional conduct because she awarded her students extra credit for Beanie Baby® dolls. Appellant claims that the decision is void because the Local Board did not appoint the hearing tribunal in an open meeting. Appellant also claims that the evidence did not support the charges. Accordingly, the Local Board's decision is reversed.

O. C. G. A. § 20-2-940 (e)(1) provides that the hearing concerning the termination or suspension of a teacher "shall be conduct before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board for its decision thereon." The Local Board used a tribunal to hear the charges against Appellant. The tribunal was selected through a process whereby an assistant superintendent called individual board members until he obtained enough members to constitute a tribunal. The assistant superintendent had several tribunal panels to fill, so he called most of the members of the Local Board before he finished with the selection process.

Appellant argues that O. C. G. A. § 20-2-940 (e)(1) commands the Local Board to select the tribunal and does not grant it the authority to delegate the selection duty to anyone else, especially to the superintendent's office, which is involved in prosecuting the case. In the absence of direct authority to delegate the selection process, Appellant argues that the Local Board, sitting as a body, has to make the tribunal appointments.

Notwithstanding Appellant's arguments, there is nothing that prevents the Local Board from delegating the duty of selecting panels to the Local Superintendent. As argued by the Local Board , the appointment process is a ministerial function best executed by the chief minister, i.e., the Local Superintendent. Local boards of education are granted broad constitutional powers to manage the local school districts and the courts will not interfere with the administration if the local board's actions are not illegal or constitute an abuse of discretion. *See, D. B. v. Clarke Cnty. Bd. of Educ.,* 220 Ga. App. 330, 469 S. E. 2d 438 (1986). There is no statutory prohibition against the process used by the Local Board and the parties have not cited any case law that prohibits such action r points to an abuse of discretion. The State Board of Education, therefore,

concludes that the Local Board had the authority to delegate the appointment function to the Local Superintendent.

Appellant also argues that the method of appointing the tribunal violated the Open Meetings Law, O. C. G. A. § 50-14-1. Issues relating to the Open Meetings Law, however, do not concern school law and, therefore, are outside the jurisdiction of the State Board of Education. O. C. G. A. § 20-2-1160.

Appellant next claims that there was no evidence to support the charges of unprofessional conduct. Appellant was charged with giving her students extra credit for them giving her a Beanie Baby® doll given by a local chain restaurant as part of a promotion.

Appellant has been involved in civic activities with her classes for several years. She has organized Christmas parties for a foster children group, spearheaded a fund raising program for a student whose family lost its home to a fire, and established a Thanksgiving food program. She was voted Teacher of the Year by the other teachers.

As part of her teaching methods in her economics and governmental classes, Appellant has given her students the opportunity to earn extra points by participating in various activities. For example, she provided her student with a limited number of emergency hall passes that they could use throughout the semester, but could turn in for extra points at the end of the semester. This program was adopted by other teachers in the school after it was presented by one of the administrators. Appellant also gave extra points to the students who brought in food for the Thanksgiving program. The extra points Appellant provided to her students as incentives were not materially significant in determining a student's grade.

There was evidence that dolls were collected and provided to foster children in prior years. Dolls were apparently distributed to foster children at a party attended by Appellants students. Photographs of the party were introduced that showed the children with the dolls. There was no evidence that Appellant used any of the dolls personally, or that any additional points were given to the students because of any benefit derived by Appellant. Rather, it appears that the school's investigation concluded that the intended charitable uses constituted ""personal" use by Appellant.

The school administration was aware of the use of extra points as an incentive by Appellant and other teachers and did not indicate to Appellant that such conduct was improper. There was no policy prohibiting the use of extra credit in such a situation. Although some of the students testified that they thought Appellant wanted the dolls for her own use, their speculations do not constitute evidence of personal use by Appellant. Perhaps some system of accounting for the dolls received and the dolls given to the foster children would have avoided any appearance of impropriety, but the lack of such a system did not establish that there was personal use by Appellant.

Thus, while there was evidence that Appellant's administrators knew of Appellant's use of incentive awards based on her student's actions, there was no evidence that Appellant did anything she had not previously done, or that Appellant was warned against using incentive awards with her students, or that Appellant personally used any of the dolls. Appellant, therefore, detrimentally relied upon the inaction of her administrators and continued the foster children

program she previously conducted. The State Board of Education concludes that the Local Board is estopped from disciplining Appellant.

Based on the foregoing, it is the opinion of the State Board of Education that there was no evidence that Appellant solicited the dolls for personal use, and the Local Board is estopped from imposing disciplinary measures on Appellant because of previous inaction of Appellant's administrators. The Local Board's decision, therefore, is hereby
REVERSED.

This 8th day of June 2000.

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Bruce Jackson
Vice Chairman for Appeals