STATE BOARD OF EDUCATION

STATE OF GEORGIA

RONALD SHARPLEY,	:	
Appellant,	:	
v.	:	CASE NO. 1981-20
HALL COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	

O R D E R

THE STATE BOARD OF EDUCATION, after hearing arguments from counsel, and after due consideration of the record submitted herein, and after a vote in open meeting,

DETERMINES AND ORDERS, that Appellant's Motion to Recuse is hereby denied, and

DETERMINES AND ORDERS, that the evidence supports the decision of the Hall County Board of Education, and, therefore, the decision of the Hall County Board of Education is hereby sustained.

Messrs. Smith, Temples and Lathem were not present.

This 11th day of February, 1982.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

RONALD P. SHARPLEY,	:	
Appellant,	:	
v.	:	CASE NO. 1981-20
HALL COUNTY BOARD OF EDUCATION,	:	
Appellee.	:	

O R D E R

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

FINDS that Appellant made both oral and written motions to appear before the entire membership of the State Board of Education for the purpose of arguing his appeal; and

FURTHER FINDS, that the members of the State Board of Education have independently reviewed the record submitted herein; and

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer 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 Appellant's motion to appear before the entire membership of the State Board of Education is hereby denied; and

DETERMINES AND ORDERS, that the decision of the Hall County Board of Education herein appealed from is hereby sustained.

Mr. Lathem abstained.

Messrs. McClung and Smith were not present.

This 10th day of September, 1981.

LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

SEP 3 1981

RONALD P. SHARPLEY, Appellant, vs. HALL COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1981-20 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Ronald P. Sharpley (hereinafter "Appellant") from a decision by the Hall County Board of Education (hereinafter "Local Board") to terminate his contract as a principal after finding that he was incompetent and willfully neglected his duties because he permitted a child's parent to spank the child in front of the child's class. The appeal claims that Appellant was denied due process because of procedural errors which occurred during the course of his dismissal. The Hearing Officer recommends that the decision of the Local Board be sustained.

PART II

FINDINGS OF FACT

On April 9, 1981, a teacher in the elementary school where Appellant served as principal discovered that one of

the fourth grade students had a knife. The student had had previous discipline problems in the school. He had been referred to Appellant on several occasions and Appellant had discussed the problems with the student's parents. When Appellant learned from the teacher that the student had a knife, he called the student's parents and asked them to come to the school. Upon his arrival, the student's father said he was going to give the student a spanking in front of his classmates. Appellant said he did not know of any law which prohibited parents from spanking their own child in the school. Appellant and the parents went to the student's classroom where the father announced to the class who he was and why he was there. The father then spanked the student with a belt in front of the other students.

The Superintendent of the Hall County School System learned about the incident the following week, and, after investigating the situation, wrote a letter to Appellant on April 14, 1981. In the letter, Appellant was informed that he was being temporarily relieved from his duties as principal, and that the Superintendent would seek to have him discharged on the grounds of incompetency, insubordination, wilful neglect of duties, and other good and sufficient cause. The spanking incident was outlined as the basis for the suspension and recommendation, and Appellant was informed that a hearing would he held before the Local Board on April 24,

1981. Appellant requested a continuance of the hearing and on April 24, 1981, the Local Board granted the continuance and requested the Professional Practices Commission to conduct a hearing, make findings, and present a recommendation.

On May 6, 1981, a tribunal composed of three members of the Professional Practices Commission conducted the hearing on the charges. A member of the Georgia Bar served as the hearing examiner for the tribunal and both Appellant and the Hall County School System were represented by counsel. Counsel for Appellant objected to the jurisdiction of the tribunal to hear the matter because the full Professional Practices Commission membership was not present to hear the matter. The objection was denied and the hearing proceeded. The Professional Practices Commission tribunal issued its findings and recommendations on May 21, 1981. The tribunal found that Appellant was incompetent and willfully neglected his duties and recommended termination of his contract as principal for the remainder of the 1980-1981 school term and that his contract not be renewed for the 1981-1982 school year. The main relevant findings of the tribunal were that Appellant was charged with the responsibility of managing the school and providing discipline, that corporal punishment was not to be used as a first measure, that if corporal punishment was used, it was to be administered in a private

setting, and that Appellant had lost control over the administration of corporal punishment so that harm could have come to the child. The Local Board adopted the findings and recommendations of the Professional Practices Tribunal on May 25, 1981. Appellant filed a motion for rehearing and to set aside the dismissal, but the motion was denied by the Local Board. An appeal to the State Board of Education was filed on June 22, 1981.

Appellant objected to appearing before the Hearing Officer and requested that the arguments be heard by the full membership of the State Board of Education. The Hearing Officer noted the objection and proceeded to hear the arguments from counsel for both parties.

PART III

CONCLUSIONS OF LAW

Appellant listed ten grounds for appeal. The first three are the grounds that the recommendations of the Professional Practices Commission were contrary to law, the evidence, and the weight of the evidence. The fourth ground is that Appellant was denied a statutory right by having to appear before only three members of the Professional Practices Commission. The fifth ground complains that the hearing examiner for the Professional Practices Commission erred in quashing the portion of Appellant's Notice to Produce

which related to the administration of corporal punishment. The sixth and seventh grounds also complain that the hearing examiner erred: (1) in permitting the Superintendent to testify at the hearing because his name was not on the list of witnesses supplied to Appellant, and (2) in ruling that the April 14, 1981 letter, and a supplemental letter, constituted the statutorily required notice to Appellant. The eighth ground complains that the Local Board erred in following the recommendations of the Professional Practices Commission because the recommendations and findings were drafted by the hearing examiner. As the ninth ground, Appellant alleges that the hearing before the Professional Practices Commission was not fair and impartial because the attorney representing the Hall County School System was sometimes employed by the Professional Practices Commission to serve as a hearing examiner. The final ground of the appeal is the claim that the Local Board erred in denying Appellant's Motion to Set Aside Dismissal and for a New Hearing without granting Appellant an opportunity to present evidence or argument to support the motion, and without advising Appellant when the motion would be considered.

In support of the first three grounds, Appellant argues that no prohibition of law or policy exists which prevents parents from administering corporal punishment to

their own children on the school grounds. The occurrence of such an event, therefore, cannot serve as a basis for the dismissal of a principal. Appellant points out that Ga. Code Ann. §32-836 does not prohibit parents from administering corporal punishment to their own children. Ga. Code §32-836 provides, in part, that:

> "...any principal or teacher employed by the board [of education], in order to maintain proper control and discipline over pupils placed under his care and supervision, may, in the exercise of his sound discretion, administer corporal punishment on any such pupil or pupils, subject to the following requirements:
>
> "(a) The corporal punishment shall not be excessive or unduly severe.
>
> "(b) Corporal punishment shall never be used as a first line of punishment for misbehavior unless the pupil was informed beforehand that specific misbehavior could occasion its use;..."

The statute is permissive in permitting a teacher or principal to administer corporal punishment in the school, provided certain conditions are met. As Appellant points out, the statute does not prohibit a parent from administering corporal punishment in the school. However, because the statute is permissive, it must be followed if the principal or teacher is to obtain immunity from civil or criminal liability because of the administration of the capital punishment. If the principal does not follow the statute's

requirements, he risks the possibility of civil or criminal liability, which might also attach to a local board of education because of the employer-employee relationship. The principal, therefore, must be sure that the statute's requirements are followed and attempt to avoid any measures not authorized by the statute. Since the statute does not permit parent discipline of a student within the school, the principal cannot permit such discipline to take place. In the instant case, the Professional Practices Commission tribunal found that Appellant had permitted a parent to discipline a child in the school, and had lost control over the circumstances so that the manner and degree of punishment were in the hands of the parent. The Hearing Officer concludes that there was sufficient evidence to support the findings and recommendations of the tribunal and the recommendations were not contrary to law.

Appellant's fourth enumeration of error claims that he was denied his statutory right to a hearing before the entire Professional Practices Commission. This is a challenge to the jurisdiction of the three-member tribunal's authority to conduct the hearing and make findings and recommendations. Appellant's argument relied upon his interpretation of Ga. Code Ann. §32-2101c(e), which provides in part:

> "The hearing shall be conducted before the local board of education or said board may designate a tribunal to consist of not less that three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the board for its decision thereon, or said board may refer said matter for hearing to a tribunal constituted by the Professional Practices Commission."

Appellant argues that since the Professional Practices Commission is composed of seventeen members, all of the members must attend the hearing because there is no statutory authority for a lesser number to "constitute" the tribunal. Ga. Code 32-2101c(e), however, establishes that the tribunal will consist of from three to five members. The statute then says that the "tribunal" may be "constituted by the Professional Practices Commission." It does not provide that the matter will be turned over to or heard by the Professional Practices Commission. Instead, the Professional Practices Commission is to constitute, appoint, set up, establish, form or appoint the members of the previously defined tribunal whose size has been established as being from three to five members. The Hearing Officer, therefore, concludes that the hearing tribunal was properly constituted; that the entire membership of the Professional Practices Commission is not required to conduct the hearing, and that Appellant was not denied any statutory rights.

The fifth enumeration of error claims that the hearing examiner erred in quashing that portion of Appellant's motion to produce which concerned the reports, notes, memoranda and complaints relating to the administration of corporal punishment. Appellant argues that such material was relevant in order to determine whether his discharge was excessive. Before making his ruling, the hearing examiner reviewed the available reports and determined that they related to excessive punishment and not to public or parental spanking of a child. The hearing examiner also determined that a request had not been made to an appropriate judicial officer pursuant to the provisions of the Buckley Amendment. Appellant did not except from the hearing officer's determinations and the hearing proceeded. The Hearing Officer, therefore, concludes that the hearing examiner did not err in granting the motion to quash the production of such records since they were not relevant to the issues of the hearing and Appellant did not object when the ruling was made.

Appellant's sixth enumeration of error claims that the hearing examiner erred in permitting the Superintendent to testify because the Superintendent's name was not on the list of witnesses provided to Appellant ten days before the hearing. As pointed out by the Local Board, the names of

witnesses are to be provided to Appellant in the ten day notice, or "shall be given as soon as practicable..." Ga. Code Ann. 32-2101c(b)(2). There was no showing of harm in permitting the Superintendent to testify and Appellant did not request a continuance of the hearing due to surprise or inadequate preparation. The testimony of the Superintendent primarily concerned his actions with respect to recommending Appellant's discharge. The Hearing Officer concludes that the hearing examiner did not err in permitting the Superintendent to testify.

Ga. Code Ann. §32-2101c(b) provides that a principal must be given notice at least ten days before the hearing of the cause for his discharge "in sufficient detail to enable him fairly to show any error that may exist therein"; the names of the known witnesses; the time and place where the hearing is to be held, and notification that the principal can require the attendance of witnesses and the production of documents. Appellant's seventh enumeration of error claims that the notice he received was not specific in detailing how he was incompetent, what authority he disregarded, or what duty he breached. Appellant also maintains that a subsequent letter, which went into more detail, was not delivered until seven days before the hearing. Appellant, therefore, claims that he was denied due process

Appellant, however, has not shown that he was unable to prepare and fairly show any error that might exist in the charges. Although he did object to the notice, Appellant did not request a continuance of the hearing in order to respond to the second supplemental letter. A review of the initial letter to Appellant shows that he was apprised of the charges and the incident which gave rise to the charges. The notice provided for in Ga. Code Ann. 32-2101c(b) does not require the degree of specificity that might be required in a criminal proceeding. It appears that the original notice, which was given to Appellant more than ten days before the hearing, was fully adequate to permit him to show any error that might exist. The Hearing Officer, therefore, concludes that Appellant was not denied due process and the hearing examiner properly denied Appellant's objections.

Appellant's eighth enumeration of error claims that the Local Board erred in considering the recommendations of the Professional Practices Commission tribunal because the findings, conclusions, and recommendations were those of the hearing examiner rather than those of the members of the hearing tribunal. He also claims that the preparation of the findings, conclusions, and recommendations by the hearing examiner constituted a denial of due process. Appellant has not cited any rule of law which prohibits a body from directing that its findings and conclusions be

drafted by another person. The report of the findings, conclusions, and recommendations states that the tribunal made its determinations and directed the hearing examiner to prepare the report. The findings, conclusions, and recommendations were considered and adopted by the tribunal when they were completed. The statute does not prescribe the method by which the tribunal must arrive at its findings and recommendations. It is clear from the record that, regardless of whether the initial findings, conclusions, and recommendations were those of the hearing examiner or the tribunal, in spite of the statement, the tribunal adopted the findings, conclusions, and recommendations as its own before they were submitted to the Local Board. By adopting the findings, conclusions, and recommendations, the tribunal has made the acts of the hearing examiner its own acts. It is clear that the tribunal heard the case, and made its own decision regarding the evidence. The Hearing Officer, therefore, concludes that it is permissable for the hearing examiner to draft the findings, conclusions, and recommendations for the Professional Practices Commission tribunal, and that the use of such a procedure did not deny Appellant due process.

The ninth enumeration of error claims that, because the attorney who represented the Hall County School System was occasionally employed as a hearing examiner by the Professional

Practices Commission, Appellant was denied due process. The Hearing Officer concludes that this claim of error is without merit. There are no prohibitions against the attorney representing the Hall County School System and being employed by the Professional Practices Commission, and there are no prohibitions against either the Hall County School System or the Professional Practices Commission from employing the attorney. It does not appear in the record that the Professional Practices Commission tribunal was unfairly influenced by the attorney representing the Hall County School System, or that they were influenced at all because he was sometimes employed as a hearing examiner by the Professional Practices Commission. Appellant did not cite any authority for the proposition that an attorney employed by an administrative agency could not present a case before the agency without denying the teacher, principal, or party appearing before the agency basic due process. The Hearing Officer, therefore, concludes that Appellant's enumeration of error is without merit.

The last enumeration of error claims that the Local Board erred in denying him an opportunity to appear and present new evidence when it met to consider his motion for reconsideration and new hearing. There is no provision of law which permits or requires that Appellant be given an opportunity to appear before the Local Board to argue and present

new evidence, and there was no offer of evidence that would be made available. The Hearing Officer, therefore, concludes that Appellant's last enumeration of error is also without merit.

PART IV

RECOMMENDATION

Based upon the foregoing findings, and conclusions, the record submitted, and the arguments and briefs of counsel, the Hearing Officer is of the opinion that the decision of the Hall County Board of Education was supported by the evidence, and that Appellant was not denied due process during the course of the hearing. The Hearing Officer, therefore, recommends that the decision of the Hall County Board of Education to terminate Appellant's contract and not renew his 1981-1982 contract be sustained.

(Appearances: For Appellant - Sartain & Carey, W. Allen Myers; For Hall County Board of Education - Harben & Hartley, Sam S. Harben, Jr., Phillip L. Hartley)

L. O. Buckland

L.O. BUCKLAND
Hearing Officer