

STATE BOARD OF EDUCATION

STATE OF GEORGIA

NINA ANDERSON CHILDS, :
 :
 :
 Appellant, :
 v. :
 : **CASE NO. 1992-7**
 :
 : **DECISION**
 :
 BIBB COUNTY :
 BOARD OF EDUCATION, :
 :
 Appellee. :

This case is submitted upon remand from the Supreme Court of Georgia to consider Appellant’s denial of due process claims. Childs v. Bibb County Bd. of Educ., Case No. S91A1247 (Ga., Feb. 6, 1992). In the first appearance of this case, Childs v. Bibb County Bd. of Educ., Case No. 1990-13 (Ga. SBE, Aug. 9, 1990), the State Board of Education upheld the decision of the Bibb County Board of Education (“Local Board”) on the grounds Appellant had not raised the denial of due process claims before the Local Board.

The Local Board terminated Appellant’s teaching contract after finding that Appellant was instrumental in improperly having academic grades changed for students who attended a summer program she directed. A hearing was originally held before a Professional Practices Commission (PPC) Tribunal. The PPC Tribunal found that the grade-changing practice had become generally accepted and the principal, the registrar, and teachers participated in the grade changes. Specifically, the PPC Tribunal found that:

... [A] combination of failures and misconduct on the part of numerous other school employees, including school building administrators, registrars, and teachers, led to the creation of an environment where the changing of students’ grades without proper authorization and documentation was possible and acceptable.

In addition, the PPC Tribunal found that:

Other school employees, including the principal and former principal of Southwest High School, who allowed this environment to exist, including teachers who signed authorizations for grade changes under false pretenses and providing false information to school registrars, and including registrars who failed to follow established procedures and standards in the keeping and posting of student records, all contributed to this series of

events and have received no disciplinary action.

The Local Board adopted these findings when it dismissed Appellant.

In her initial appeal to the State Board of Education, Appellant claimed that the Local Board denied her due process because she followed an acceptable practice. Additionally, she claimed that the Local Board denied her equal protection because of the disparate treatment accorded her by the Local Board. The State Board of Education upheld the Local Board's decision on the grounds Appellant had not raised her claims before the Local Board. Appellant argued that an earlier opportunity to raise her claims did not exist because the claims arose after the Local Board adopted the findings of the PPC Tribunal and ruled against her. The Georgia Supreme Court adopted Appellant's view and held that Appellant had raised the claims at the earliest opportunity before the State Board of Education. The Georgia Supreme Court then remanded the case to the State Board of Education "to consider anew [Appellant's] constitutional claims."

Upon remand, Appellant argues that the Local Board adopted the PPC Tribunal's findings of fact, one of which was that the practice of changing academic grades had become a generally accepted practice within her school. Appellant then argues that it is a denial of due process for the Local Board to dismiss her for following an accepted practice without giving her fair warning that she was subject to dismissal for following the practice. Appellant also argues that the Local Board denied her equal protection by dismissing her without taking action against other employees who were similarly involved in the practice.

The Local Board argues that the practice of changing grades was generally accepted only by Appellant and the other teachers who she persuaded to participate in the practice; the practice was not initiated by the Local Board or the administration of Appellant's school and it was never condoned by either the Local Board or the administration. Thus, according to the Local Board, the finding that the practice of changing grades was acceptable does not rise to the level of meaning that the practice was acceptable throughout the school system. Accordingly, the Local Board argues that the practice did not require the Local Board to give "fair warning" before it dismissed Appellant.

We agree with the Local Board. The PPC Tribunal finding that the practice of changing grades had become accepted, which the Local Board adopted, was descriptive of the environment that existed at the school as a result of Appellant's actions. During the hearing before the PPC Tribunal, Appellant did not try to show that she should have been excused because the practice had become accepted. Instead, the record shows that Appellant tried to hide the fact that academic grades were changed without teacher authorization when the initial investigation was made. During the hearing, Appellant's testimony showed that she was aware the academic grades should not have been changed in the manner they were changed. Rather than establish a defense of following an accepted practice, Appellant attempted to shift the blame to others. As a result, she showed that a practice arose among some of the teachers, counselors, and registrars to change academic grades when students attended the summer program. Thus, to the

extent that more than one person was involved, the practice of changing grades became an accepted practice among a small group within one school. The practice, however, was never authorized or condoned by the Local Board or the Local Superintendent. We, therefore, conclude that the Local Board's adoption of the finding that the practice of changing grades had become an accepted practice did not require the Local Board to give Appellant "fair notice" that she would be subject to discipline for improperly obtaining the changes in the academic grades of students who attended her summer program.

Appellant also argues that the Local Board denied her equal protection because the other employees who participated in the practice were not similarly disciplined. Appellant's argument is based upon the finding by the PPC Tribunal that other employees were not subjected to disciplinary measures because of their participation in the grade-changing practice. The PPC Tribunal's finding, however, only establishes that the Local Board had not taken any action against other employees by the time the hearing was conducted. The record does not establish that other employees who were similarly situated were not subject to disciplinary measures. The record, however, does show that the other counselor involved in the practice was disciplined. We, therefore, conclude that the Local Board did not deny Appellant equal protection by subjecting her to termination.

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board established that Appellant was responsible for an improper grade-changing practice, and that the Local Board did not deny Appellant either due process or equal protection by terminating her contract. The Local Board's decision, therefore, is

SUSTAINED.

This 9th day of July, 1992.

Mr. Brinson and Mr. Williams were not present.

James H. Blanchard
Vice Chairman for Appeals