

MARCIA MARTIN,

Appellant

v.

BALTIMORE CITY BOARD
OF SCHOOL COMMISSIONERS,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 06-25

OPINION

This is an appeal of the Appellant's reassignment from Principal of Frances M. Wood High School in Baltimore to Vice-Principal at another Baltimore City high school. The Appellant alleges that her reassignment was disciplinary in nature and that the local board violated her due process rights by not providing a hearing, as required by §6-202 of the Education Article and the Memorandum of Understanding (MOU) between the local board and the Public School Administrators and Supervisors Association. The Appellant further argues that the reassignment decision was illegal because the MOU entitled the Appellant to have at least 90 days to show improvement before her evaluation became a matter of official record. The local board has filed a Motion to Vacate the Appeal¹, arguing the local superintendent has broad statutory authority to transfer personnel and that its decision was not arbitrary, unreasonable or illegal. The Appellant submitted a motion in opposition to the local board's motion.

FACTUAL BACKGROUND

At the start of the 2005-2006 school year, the Appellant, Marcia Martin, was Principal at Frances M. Wood High School in Baltimore City. During the first week of the school year, Deborah L. Wortham, Baltimore City's Area Academic Officer, observed Wood High School and detailed several deficiencies that Ms. Martin needed to address. In a memo to Ms. Martin dated September 7, 2005, Ms. Wortham noted, among other things:

- "The physical plant, including offices spaces, the cafeteria, hallways, and classrooms fail to provide a literate environment. On opening day, the main office conference table was piled high with boxes, books, and a variety of materials, including confidential student records.... One week later, there was no observable progress beyond that made with assistance from the Area Office."
- "During the opening week...[it] was observed that when the halls were crowded

¹ As a matter of legal procedure, a motion to vacate would ordinarily be filed to set aside an improper order or judgment, not to dismiss an appeal or affirm the decision of the local board. For purposes of this appeal, therefore, the local board's motion will be treated as a motion to dismiss or for summary affirmance. See COMAR 13A.01.05.03C, D.

daily with students who either had no schedule or chose not to report to class you did not adequately address the immediate situation or create a plan of action to alleviate the situation.”

- “The most serious lack of leadership is evident in the area around the delivery of effective instruction.”
- “The condition of student records at [the school] is deplorable. Clearly, this situation should not be laid entirely at your feet, as much of the crisis was inherited upon your arrival. However, there is positively no excuse for the condition to have remained and to be exacerbated since your arrival.”

September 7, 2005 Memo from Ms. Wortham.

Consequently, Ms. Wortham stated that Ms. Martin needed to address the following areas immediately:

- The physical plant, including office spaces, the cafeteria, hallways, and classrooms must reflect a literate environment. All items must be filed.
- Confidential student records must be filed.
- Student records must be filed.
- Implement a plan to address scheduling, registration, and the delegation of responsibilities to staff members.
- Monitor the scheduling process to ensure the delivery of instruction.
- Monitor the implementation of viable career pathways.
- Monitor the instructional delivery and maintenance of student records.

Id. Ms. Wortham further noted the need for a Performance Improvement Plan to correct these items.² Ms. Martin acknowledged receipt of the memorandum on September 12, 2005.

Subsequently, in a letter dated November 2, 2005, Baltimore City Schools Chief Executive Officer, Dr. Bonnie S. Copeland, notified Ms. Martin that “[a] determination has been made that it is in the best interests of the Baltimore City Public School System that you be reassigned to the position of assistant principal for the remainder of the 2005-2006 school year (Fiscal Year 2006), effective November 26, 2005.”

As a member of the Public School Administrators and Supervisors Association (PSASA), Ms. Martin exercised certain rights provided under the Memorandum of Understanding (MOU)

² Ms. Martin states in her opposition to the local board’s motion that she “in fact proposed a plan to address the issues contained in Deborah Wortham’s Memorandum.” *Id.* at p 2. However, Ms. Martin did not include a copy of her proposed plan in her submissions for this appeal.

between the PSASA and the local board. As permitted under Article XV of the MOU, Ms. Martin grieved the reassignment determination through the Grievance and Arbitration Procedure.

After completing step 3 of the grievance procedure, Ms. Martin proceeded to step 4 by requesting that the local board grant her a hearing on the merits. Ms. Martin asserted that her reassignment was disciplinary in nature and she was not provided a due process hearing, as required under section 6-202 of the Education Article. In addition, Ms. Martin contended that her reassignment and demotion within 20 days of being provided a list of changes to be made at Wood High School violated Article VII(B)(1) of the MOU, which provides that following receipt of specific improvement measures, members should have a minimum of 90 days to show improvement before an evaluation is made a matter of official record.

The local board denied Ms. Martin's request for a hearing in a letter dated February 17, 2006. The local board stated:

The CEO has the undisputed statutory authority to effectuate Ms. Martin's reassignment under §6-201 of the Md. Education Code Ann. 6-201(2)(ii). This section holds that "the county superintendent shall...transfer [professional personnel] as the needs of the schools require." ... This was not a demotion, but a reassignment. ...

This personnel action was a reassignment under §6-201(2)(ii); as such, a hearing under Md. Education Code Ann. §6-202 would be inappropriate.

In a response letter dated February 20, 2006, Ms. Martin requested reconsideration of the local board's denial of a hearing. Ms. Martin asserted that she was entitled to a hearing as a matter of right; that her reassignment was in fact a demotion, especially in light of her salary reduction³, and that the reassignment must comply with Article VII(B)(1) of the MOU. Ms. Martin further argued that the local superintendent's power to transfer personnel under section 6-201(2)(ii) implied "lateral transfers and not demotions of personnel from a superior position to that of an inferior position."

This appeal to the State Board followed on March 22, 2006. In its response, the local board frames the issue before the State Board as "whether the local board's decision to reassign

³ In the November 2, 2005 letter from Dr. Copeland, Ms. Martin was notified that her salary would be adjusted to that of assistant principal effective November 26, 2005. The State Board has previously held that where a transfer is made during the school year, the salary of the employee may not be reduced for the remainder of that year. *See Chenoweth v. Board of Education of Baltimore County*, MSBE Opinion Number 95-29 (Dec. 5, 1995). In compliance with this requirement, the local board has returned Ms. Martin's salary to that of principal for the remainder of the 2005-2006 school year, and paid her lost salary during the period her salary was adjusted. *See Local Board Memorandum in Support of Motion to Vacate*, at 1.

personnel should be treated like a disciplinary action, therefore subject to the procedural due process requirements of Section 6-202 of the Education Article.” The local board argues that it is not required to show cause for reassigning an employee to a lower position, particularly where the Appellant does not allege that the local board’s decision to reassign her was based on any illegal considerations.

STANDARD OF REVIEW

The standard of review that the State Board applies in reviewing the reassignment decisions of the local board or local superintendent is that the decision of the local board is considered *prima facie* correct, and the State Board may not substitute its judgement for that of the local board unless the decision is arbitrary, unreasonable or illegal. COMAR 13A.01.05.05A.

It is well established in Maryland that a local superintendent has broad statutory authority to transfer personnel “as the needs of the system require.” Md. Code Ann., Educ. §6-201(b). Numerous State Board opinions, and the Court of Appeals in *Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff’d*. 107 Md. App. 286 (1995), affirm that a transfer of personnel to a lateral position or to a position of lower rank is within the discretion of the local superintendent. *See, e.g., Mayhorne v. Harford County Board of Education*, MSBE Opinion No. 00-17 (May 22, 2000) (transfer from principal to teacher); *Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999) (lateral transfer of principal); *Hart v. Board of Education of St. Mary’s County*, 7 Op. MSBE 740 (1997) (transfer from assistant principal to classroom teacher); *Chenowith v. Board of Education of Baltimore County*, 7 Op. MSBE 192 (1995) (transfer from assistant principal to director of recruitment); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995) (transfer from assistant principal to classroom teacher).

While a principal may not agree with the reasoning behind a local superintendent’s decision to reassign him or her, the disagreement alone does not make the decision arbitrary, unreasonable, or illegal.

ANALYSIS

Ms. Martin argues that her reassignment from Principal to Vice-Principal was, in fact, disciplinary in nature, which entitled her to have at least 90 days to show improvement before her evaluation was made a matter of public record. Further, she argues that she was entitled to a hearing prior to the alleged demotion. Ms. Martin alleges that the reasons given by the local superintendent for her reassignment were pretextual in order to avoid providing her due process.

The local board generally responds that the local superintendent has broad authority to transfer personnel, and without being explicitly advised by the superintendent that the transfer is a result of a disciplinary action, the transfer should not be deemed a disciplinary action that entitles Ms. Martin to a hearing.

We address Ms. Martin’s due process arguments below.

Due Process Under the MOU

Ms. Martin first alleges that her rights were violated because she was not given at least 90 days to show improvement before her evaluation became part of her official record, as required under the MOU. Article VII.B.1., the portion on which Ms. Martin relies, addresses employee evaluations and states:

The evaluator and Unit II member shall jointly discuss the performance of said member in at least one (1) conference. A formal, signed statement shall be provided to show strengths, weaknesses, and specific improvement measures regarding the Unit II member's performance. The statement must clearly show how and when areas of weakness must show improvement. **The Unit II members shall have a minimum of ninety (90) calendar days to show improvement before an evaluation is made a matter of official record.** The first conference shall be held as early in the evaluation cycle as possible, and nothing shall limit the number of conferences.

(Emphasis added.)

We conclude that Ms. Martin's reliance on this provision of the MOU is misplaced. Nothing in the language of this provision should be construed to apply to or narrow the local superintendent's authority to reassign personnel based on the needs of the school system. As stated above, the authority of the local superintendent to transfer personnel in the best interest of the school system is broad and statutorily conferred. *See* Educ. Art., §6-201(b). Consequently, any attempt in the MOU to limit the authority of the local superintendent would be void as contrary to Maryland law. *See Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion Number 99-2 (January 26, 1999).

In addition, we note that the local superintendent did not cite the issues identified in Ms. Wortham's September 7, 2005 memorandum as the basis for the reassignment decision. We will not presume, therefore, that the date of the local superintendent's reassignment letter - November 2, 2005 - marked the date on which Ms. Martin's evaluation was "made a matter of official record."

Finally, we find that Ms. Martin's reliance on the MOU for a mandatory hearing before the local board is also misplaced. Ms. Martin cites Article XV of the MOU which governs the grievance and arbitration procedures. It states in relevant part:

The decision of the foregoing step [3 decision from the Area Executive Officer or Designee] may be appealed in writing by the aggrieved party to the Board within five (5) school days after the decision of the CEO or his/her designated representative has been received.

The Board may hear the appeal or it may refer the matter for hearing to a Hearing

Officer to be designated by said Board. The grievant shall be heard fifteen (15) school days after the receipt of the appeal by the Board.

MOU, Article XV.C.4.

The plain language of the MOU makes an appeal before the local board permissible, not mandatory. More importantly, in a previous appeal involving a similar MOU, the State Board has held that administrative transfer decisions are not subject to the grievance procedures under such agreements:

To the extent that provisions of the agreement attempt to confer a right to a hearing in an administrative transfer case such as this, any such provision is void as being contrary to the dictates of Maryland law. Appellant would be entitled to a hearing only if he were transferred for illegal reasons such as illegal discrimination.

Heaney v. New Board of School Commissioners for Baltimore City, MSBE Opinion Number 99-2 (January 26, 1999). The local board correctly points out that Ms. Martin has not alleged that she was reassigned for illegal reasons. Consequently, she was not entitled to a hearing under the terms of the MOU.

Due Process Rights Under Education Article Section 6-202

Ms. Martin further alleges that her rights were violated because she was not granted a hearing before the local board, as required under §6-202 of the Education Article. Section 6-202(a)(2), among other things, governs suspension and dismissal of principals and requires a local board to provide a hearing, when requested, before an individual is suspended or dismissed from his/her position.

Ms. Martin argues that the real reason she was reassigned was not for the needs of the school system, but as discipline for the areas of improvement noted in Ms. Wortham's memorandum. She compares the facts of her case to *Smith v. Howard County Board of Education*, MSBE Opinion No. 04-26 (May 26, 2004), in which the State Board upheld a teacher's challenge to his involuntary transfer on grounds that the transfer was retaliation for his involvement in union activities and for his success with grievances and appeals against the principal. Ms. Martin contends that while "section 6-202 does not specifically address demotions, it clearly addresses the legislature's recognition that disciplinary proceedings have to comply with Due Process rights of the United States Constitution." See December 16, 2005 letter to local board.

We conclude that Ms. Martin's argument lacks merit. First, the provisions of §6-202 apply only to suspensions and dismissals, not to personnel reassignments under §6-201. The State Board has consistently held that discipline for which "cause" must be demonstrated and a hearing provided relates to suspension and dismissal, not reassignment. See Educ. Art. §6-202;


Brown v. Prince George's County Board of Education, MSBE Opinion Number 01-21 (June 20, 2001); *Chenowith v. Bd. of Educ. Of Baltimore County*, 7 Op. MSBE 197 (1995). The local superintendent's broad authority under §6-201(b) includes the discretion to transfer personnel to positions of lower rank. See, e.g., *Mayhorne v. Harford County Board of Education*, MSBE Opinion No. 00-17 (May 22, 2000) (transfer from principal to teacher); *Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997) (transfer from assistant principal to classroom teacher); *Chenowith v. Board of Education of Baltimore County*, 7 Op. MSBE 192 (1995) (transfer from assistant principal to director of recruitment); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995) (transfer from assistant principal to classroom teacher). Such a decision will not be presumptively treated as a suspension or dismissal under §6-202, particularly where, as here, the local board directly denies the reassignment is disciplinary. See, e.g., February 17, 2006 letter from Dawana Sterrette, Interim Board Executive ("This was not a demotion, but a reassignment.").

Moreover, we conclude that this appeal is distinguishable from *Smith v. Howard County Board of Education*, MSBE Opinion No. 04-26 (May 26, 2004). In *Smith*, the Appellant provided compelling evidence that his involuntary transfer followed after his involvement with statutorily protected union activities. Because of this, the local superintendent's decision to transfer him was influenced by an unlawful motivation.

In this case, however, Ms. Martin does not allege her reassignment was in retaliation for her participating in statutorily protected activity. Indeed, other than the alleged due process violation which we have found to be without merit, Ms. Martin's appeal raises no other alleged illegality. We point out that even if the reassignment was for "disciplinary reasons," which we do not presume, that decision would not be illegal. Under the local superintendent's broad statutory authority to transfer professional personnel as the needs of the schools require, the local superintendent is not required to show cause for reassignment. Even if Ms. Martin had been performing at a satisfactory level, her reassignment would have been legally permissible. See, e.g., *Brown v. Prince George's County Board of Education*, MSBE Opinion Number 01-21 (June 20, 2001) (affirming decision of the local board to transfer teacher with previous good performance evaluations).

CONCLUSION

Based on the evidence presented, we hold that the local board's decision upholding Ms. Martin's reassignment and denying her a hearing was not arbitrary, unreasonable or illegal. Accordingly, we affirm the decision of the local board.



Edward L. Root
President

absent

Dunbar Brooks
Vice President

Lelia T. Allen

Lelia T. Allen

JoAnn T. Bell

JoAnn T. Bell

absent

J. Henry Butta

Beverly A. Cooper

Beverly A. Cooper

Calvin D. Disney

Calvin D. Disney

Richard L. Goodall

Richard L. Goodall

Karabelle Pizzigati

Karabelle Pizzigati

Maria C. Torres-Queral

Maria C. Torres-Queral

David F. Tufaro
David F. Tufaro

July 19, 2006