

KENT COUNTY BOARD OF EDUCATION,

Appellants

v.

KENT COUNTY TEACHERS'
ASSOCIATION

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 05-12

OPINION

The Kent County Board of Education seeks a declaratory ruling regarding the arbitrability of a dispute between the local board and the Kent County Teachers' Association ("KCTA")¹. The dispute concerns the local superintendent's decision to redesignate special education teachers who had previously held IEP chairman² positions for which they had received extra-duty pay, as case managers for which there is no extra-duty pay because the case manager responsibilities are to be completed during the regular duty day and the principal or principal's designee is to be IEP chairman. The local board contends that the underlying dispute concerns the local superintendent's statutory authority to make assignment decisions and to set educational policy central to the delivery of special education and related services with disabilities. KCTA asserts that the issues in this case concern wages which are a mandatory subject of collective bargaining and therefore resolution of this matter is subject to arbitration.

FACTUAL BACKGROUND

The negotiated agreement currently in force between KCTA and the local board provides for the payment of an extra-duty stipend to special education teachers for the performance of duties associated with the position of IEP chairman. This particular extra-pay stipend has been a part of the negotiated agreement since 1994.

On May 25, 2004, Dr. Bonnie Ward, the Superintendent of Kent County Public Schools, issued a memorandum to principals and special education teachers advising that, beginning with the 2004-2005 school year, special education teachers would be serving as case managers and principals would be serving as the IEP chairman. The memorandum states as follows:

In order to be in compliance with IEP team membership

¹KCTA is the exclusive employee representative of certain certificated employees of the Kent County Board of Education, including teachers but excluding principals and assistant principals.

²The IEP ("Individualized Education Plan") chairman position was previously called ARD ("Admission, Review, and Dismissal") chairman.

regulations, we are making these changes beginning with the 2004-05 school year.

- a. The IEP Chair must be the principal or principal designee when the principal is not available so decisions such as commitment of funds and staffing can be made.
- b. The special education teacher to whom the student is assigned will act as the student's case manager. The case manager will
 - act as the primary contact for parents regarding their child's education,
 - contact parents regarding meetings,
 - participate in the development of the IEP by the team,
 - take notes at the IEP meeting,
 - send out follow up work, and
 - monitor the implementation of the IEP.
- c. **No extra pay for extra duty compensation will be paid to the principal or case manager. The duties of each will be handled during the duty day.**
- d. Case managers should work closely with their principal to arrange schedules if need be to accomplish the needed tasks during the school day. (Emphasis added).

On September 10, 2004, KCTA filed a grievance on behalf of its members contending that teachers were "concerned about the change in IEP format and team composition explained in the memorandum from Dr. Bonnie Ward". On October 1, 2004, KCTA attempted to appeal the grievance to Step II under the negotiated agreement. The superintendent issued a written response advising that the matter was neither negotiable nor grievable under Maryland law because it involved matters of assignment subject to §6-201(b) of the Education Article, matters concerning compliance with IDEA, and matters of educational policy. Thereafter, KCTA filed a demand for arbitration which is currently pending with the American Arbitration Association. The local board has filed a petition for declaratory relief with the State Board because it believes that the dispute between the parties concerns an illegal subject of collective bargaining and is therefore not subject to arbitration.

ANALYSIS

Local Board's Position

The local board asserts that the matters in this case are neither negotiable nor arbitrable because they concern the statutory authority of the local superintendent to make assignment decisions pursuant to §6-201(b) of the Education Article and to set educational policy central to the delivery of special education and related services to students with disabilities. The local

board explains that the superintendent assigned principals or principal designees to the IEP chairman position to better meet the requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*; in particular, the requirement that the IEP chairman have the authority to bind the school system on the funding and staffing needs of the student's IEP. Consequently, the special education teachers who once held these positions were redesignated as case managers and the school principal or principal's designee, as IEP chairman. Based on these changes, the duties of IEP chairman and case manager would be handled exclusively during the duty day and no extra duty stipend would be paid to either.

KCTA's Position

In contrast, KCTA maintains that arbitration is the appropriate venue for resolution of this matter because extra-pay for extra-duty concerns wages which are a mandatory subject of bargaining.³ KCTA argues that the case manager duties set forth in Dr. Ward's memorandum are merely a summary of the IEP chairman job responsibilities which were developed pursuant to the negotiated agreement. Thus, despite the case manager title, the performance of these duties by special education teachers requires payment of the negotiated extra-duty stipend. In response to the local board's argument that this is a case about the superintendent's authority to assign personnel, KCTA argues that the IEP chairman position is extracurricular and therefore the superintendent's authority to assign and transfer teachers pursuant to § 6-201 does not govern.

Merits of Case

We find the local board's argument persuasive. In our view, this case concerns the local superintendent's statutory authority to assign principals, teachers, and other certificated personnel to their positions in the schools, describe the duties of the positions, and transfer the employees as the needs of the schools require. It is well established in Maryland that a local superintendent has broad statutory authority to assign and transfer teachers "as the needs of the system require." *See* 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 a teacher is within the discretion of the local superintendent. *See, e.g., 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). Because a position is a compilation of job duties and not merely a title, the statutory authority to assign staff to their positions in the schools by necessary implication

³Section 6-408(b)(1) of the Education Article requires the local board and KCTA to "meet and negotiate . . . on all matters that relate to salaries, wages, hours, and other working conditions."

encompasses defining the duties that go along with those positions.

Here, the local superintendent assigned special education teachers who once held IEP chairman positions to the positions of case manager. In her May 25, 2004 memorandum, Dr. Ward set forth the case manager job responsibilities as part of that assignment.⁴ In that memorandum Dr. Ward also explained that the basis for the change was to bring IEP team membership in compliance with legal requirements. We believe this is a valid rationale. IDEA requires that a supervisor who is knowledgeable about the availability of resources of the local school system be in attendance at every IEP meeting. *See* 20 U.S.C. §1414(d)(1)(B)(iv) and COMAR 13A.05.01.07A(1)(d). There has been concern throughout the State that school representatives in attendance at IEP meetings are not knowledgeable about the resources available within the local school system for special education and related services. Dr. Ward's decision to place principals or principal designees in the position of IEP chairman addresses this concern. This is especially true in a smaller school system such as Kent County where there is not a group of mid-level special education supervisors who may be able to fill this role. *See* local board's response at p. 7, footnote 8.

We acknowledge that there is an impact on wages here because the case manager will not receive an extra-duty stipend since the duties are to be performed during the regular duty day. This impact on wages, however, is encompassed within the superintendent's statutory authority to transfer personnel under § 6-201(b) and does not make this an arbitrable wage case under collective bargaining principles. *See New Board of Sch. Comm'rs. of Baltimore City v. Public Sch. Adm'rs and Supervisors Ass'n of Baltimore City*, 142 Md. App. 61 (2002)(upholding State Board's position that the authority to reassign an employee to a lower level position encompasses the authority to reduce the employee's salary).

KCTA argues that the case manager duties set forth in the memorandum are merely a summary of the job responsibilities listed on the job description for IEP chairman for which an extra-duty stipend has already been negotiated. While it appears that the case manager still retains some of the responsibilities previously performed by the IEP chairman, the case manager position is inherently different in the sense that the case manager does not chair the IEP team meetings nor does the case manager have authority to commit funds or staff that are required to implement the student's IEP. That task now belongs to the principal or principal's designee. In addition, the responsibilities of both the case manager and IEP chairman are now expected to be performed during the duty day.

KCTA also contends that the IEP chairman and case manager position are extra-curricular and are therefore not governed by the superintendent's authority to assign and transfer teachers pursuant to §6-201(b), citing *Regala v. Charles County Board of Education*, 5 Ops. MSBE 319

⁴We note that Dr. Ward issued her memorandum well in advance of the 2004 – 2005 school year before any KCTA members were to perform as case managers.

(1989), to support this proposition.⁵ We disagree. The IEP chairman and the case manager positions are curricular in nature. Both positions are directly tied to the provision of special education to students and to meeting the procedural safeguards associated with the provision of those services as set forth in IDEA. These positions in the special education arena are inherently tied to the classroom, the educational curriculum, and student learning. The IEP chairman and case manager have very different responsibilities from the responsibilities of an athletic team coach, for example, which is an extra-curricular position. Furthermore, the fact that the negotiated agreement between KCTA and the local board treats the IEP chairman position as an extra-duty assignment for which a stipend is given does not make the position extra-curricular under the law.⁶

Because we believe that this case concerns the superintendent's statutory authority to assign and transfer personnel as the needs of the school require, we find that the issues raised herein are not negotiable nor arbitrable. Section 6-408(b)(3) states that a "public school employer may not negotiate the school calendar, the maximum number of students assigned to a class, **or any matter that is precluded by applicable statutory law.**" (Emphasis added). Section 6-201(b) is a statute that precludes negotiation on the matters at issue because it vests the local superintendent with the sole discretion to assign personnel and describe their job responsibilities as the needs of the schools require. *See also New Board of Sch. Comm'rs. of Baltimore City v. Public Sch. Adm'rs and Supervisors Ass'n of Baltimore City*, 142 Md. App. 61 (2002)(reviewing the transfer of several principals to teaching positions at a lower salary and upholding the State Board's determination that the matter was not arbitrable). In this case, Dr. Ward's decision to assign principals and principal designees as IEP chairmen and to assign special education teachers as case managers serves the legitimate purpose of more closely aligning

⁵In *Regala*, the State Board held that the failure to reappoint an individual to an extra-curricular coaching position or to any other voluntary extra-curricular duty is a legal subject of collective bargaining. *Regala* was later overturned by the State Board in *Education Ass'n of St. Mary's County, Inc. v. Board of Educ. of St. Mary's County*, 7 Opinions MSBE 683 (1997), holding that the failure to reassign an employee to a voluntary extra-curricular coaching position has an impact on educational policy and the administration of the school system as a whole that is more significant than its impact on the interests of the employee and is therefore not subject to negotiation or arbitration. Since the collective bargaining law was changed in 2002 to add a permissive subject of bargaining, the balancing test employed in these cases is not relevant to this appeal. *See Montgomery County Education Association v. Mtgy Cty Bd. Educ.*, 311 Md. 303 (1987).

⁶The negotiated agreement defines "extra-duty" as "those assigned tasks in excess of regular duty which require the time of a teacher on a regular basis and which are related to non-classroom activities." *See* Negotiated Agreement 2005 – 2007, Art. XXIV. We find that certain tasks may not be classroom activities but may still be directly tied to the classroom and to the educational curriculum, such as those in this case which are related to the delivery of special education.

IEP team membership with the requirements of the special education law.

CONCLUSION

For these reasons, we find that the local superintendent's decision to reassign special education teachers to case manager positions and define the duties of those positions rather than retain the teachers in IEP chairman positions is an exercise of the superintendent's statutory authority to assign and transfer personnel as the needs of the schools require pursuant to § 6-201(b). Accordingly, the matters at issue in this case are not negotiable because they are precluded by applicable statutory law and are therefore not subject to arbitration.

Edward L. Root
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Dunbar Brooks
Vice President

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JoAnn T. Bell

J. Henry Butta

Beverly A. Cooper

Calvin D. Disney

Clarence A. Hawkins

Karabelle Pizzigati

Maria C. Torres-Queral

David F. Tufaro

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