

SHEILA CAIN

Appellant

v.

WICOMICO COUNTY BOARD
OF EDUCATION,

Appellee.

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 12-36

OPINION

INTRODUCTION

In this appeal, Appellant challenges the local board's decision upholding her reassignment from an Assistant Principal position to a position as a Reading Intervention Teacher. The local board filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant opposed the motion and the local board responded.

FACTUAL BACKGROUND

On September 9, 2011, the principal of Pinehurst Elementary School held a meeting with Appellant to discuss the Appellant's 2010-2011 year end evaluation. Appellant voiced her disagreement with the evaluation and refused to sign the document.

On September 15, 2011, Appellant attended a meeting with Human Resources Personnel. Ms. Moses, former Human Resource Director, documented that meeting by letter dated September 16, stating as follows:

On September 15, 2011, a meeting was held to provide you an opportunity to respond to our concerns regarding your behavior, interpersonal skills with staff, and work habits. More specifically, we discussed our recent concerns of your combative behavior whereby you refused to sign documents or even receive a copy of such documents. We discussed historical behaviors and those recently which have created a pattern of poor relationship skills, argumentativeness, and insubordinate behavior that does not meet our expectations. Our discussion revealed that you either cannot or will not accept this constructive criticism and refuse any measure of assistance from your peers and supervisors. You specifically commented that you believe you have had to battle for entire 17

years you have been employed with Wicomico County Public Schools.

Ms. Moses delivered the letter to Appellant that same day. The letter further advised Appellant that the Superintendent had placed her on administrative leave and that she was to report to the Chesapeake Counseling Agency for a fitness for duty evaluation based on concerns regarding her behavior.

On October 13, 2011, Ms. Moses and Mrs. Jones, Director of Elementary Education, advised the Appellant that effective October 17, 2011, the Superintendent had assigned her to the position of Reading Intervention Teacher for the remainder of the school year. Ms. Cain appealed that decision to the local board.

On March 6, 2012, the local board upheld the Superintendent's decision to transfer the Appellant to the position of Reading Intervention Teacher. This appeal ensued. Ms. Cain verbally and in writing requested an expedited appeal.¹ Thereafter, on July 11, 2012, Ms. Cain submitted a "Deferred Retirement" letter indicating that July 11, 2012 would be the last day of her employment in Wicomico County Public School System.

STANDARD OF REVIEW

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

ANALYSIS

The local board has asserted that the case is moot because Ms. Cain has resigned and there is no remedy that this Board can provide her. That may well be the case. We will proceed, however, in order to provide Ms. Cain with a decision of this Board on the merits of her appeal

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 Special Appeals in *Hurl v. Board of Educ. of Baltimore County*, 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 *Mayhorne v. Harford County Bd. of Educ.*, MSBE Op. No. 00-17 (2000); *Heany v. New Bd. of Sch. Commissioners for Baltimore City*, MSBE Op. No. 99-2 (1999); *Hart v. Board of Educ. of St. Mary's County*, 7 Op. MSBE 740 (1997); *Chenowith v. Board of Educ. of Baltimore County*,

¹ There is no right to an expedited appeal. The decision to expedite the issuance of a decision in an appeal is in the sole discretion of this Board. Briefing and responses in this case were completed on May 29, 2012. The decision, issued this day, is an expedited decision.

7 Op. MSBE 192 (1995); *Cameron v. Board of Educ. of Baltimore County*, 6 Op. MSBE 814 (1995). No tenure attaches to administrative positions. Rather, employees in administrative positions acquire and maintain tenure in employment with the school system and not in any particular position. *Cameron*, 6 Op. MSBE at 815-816.

Just like any other decision, the decision to transfer an employee to a different position must not be arbitrary, unreasonable, or illegal. Pursuant to Md. Educ. Art. §6-201(b)(2) the Superintendent may “transfer [employees] as the needs of the school system require.” The Superintendent transferred Ms. Cain because she was not performing satisfactorily in her position. The local board reviewed and upheld that decision. Based on the record, we do not consider that decision to be arbitrary or unreasonable.

Ms. Cain also asserts that she was entitled to an evidentiary hearing. The concept of due process can, but does not necessarily, include the right to an evidentiary hearing. In transfer cases like this one, there is no due process right to an evidentiary hearing.

Finally, Ms. Cain alleges racial discrimination throughout her 17 years working in the school system. That issue was not decided by the local board. We decline to rule on issues not presented and decided by the local board.

CONCLUSION

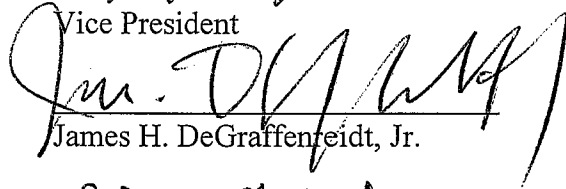
For all these reasons, we affirm the decision of the local board.



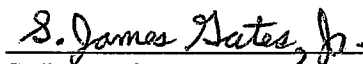
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President



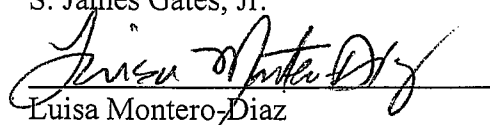
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S. James Gates, Jr.



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Sayed M. Naved

abstain

Madhu Sidhu

Donna Hill Staton

Donna Hill Staton

All

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Guffrie M. Smith, Jr.

Guffrie M. Smith, Jr.

Kate Walsh

Kate Walsh

August 28, 2012