

DONALD SHANEOR,

Appellant

v.

BALTIMORE COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-05

OPINION

In this appeal, a teacher with the Baltimore County Public School System (“BCPS”) contests his teaching schedule for the 1998-99 school year. The local board has filed a Motion to Dismiss maintaining that the appeal is moot. Alternatively, the local board has filed a Motion for Summary Affirmance maintaining that its decision is not arbitrary, unreasonable or illegal. Appellant has submitted an opposition to the local board’s motion.

BACKGROUND

Appellant is a high school teacher who has been employed by the BCPS for approximately 29 years, serving most of his time at Loch Raven High School. Appellant’s areas of certification are cooperative education and business education. Throughout his career he has taught courses in his areas of certification, as well as courses outside of those areas as needed. In addition, Appellant has served for several years as the Chair of the Cooperative Education Department at Loch Raven.

During June, 1998, Appellant was advised of his teaching schedule for the 1998-99 school year. In addition to Appellant’s duties as the Chairman of the Cooperative Education Department, his teaching schedule was to consist of one section of occupational preparation and three sections of U.S. History. Appellant had also arranged to work as the principal of the night school for the Franklin High School Adult Education Center.¹

Unhappy with his teaching schedule, Appellant submitted an appeal to the Central Area Superintendent, requesting an adjustment to the class assignments. By letter dated August 18, 1998, the central area superintendent denied the appeal, indicating that “Mr. Shaneor’s

¹Because Appellant was on sick leave for the entire 1998-99 school year, he never actually taught any of the classes on his teaching schedule at Loch Raven. During the hearing before the Hearing Examiner, Appellant testified that he was on sick leave because his 1998-99 teaching assignment was too stressful. Tr. 78-81. Nonetheless, despite his sick leave status, Appellant continued to perform his responsibilities as night school principal.

assignment is in the best interests of the students and the overall school's organization.”

Appellant appealed the decision to the Superintendent. The matter was referred to Randall D. Grimsley, the Director of the Office of Staff Relations for BCPS, who acted as the Superintendent's designee. A hearing was conducted in which Appellant's union representative was present. In upholding Appellant's teaching assignment, the Superintendent's designee stated:

The principal has a right to utilize his staff to its best advantage for student success. Based on the fact that appellant was informed in advance of the principal's decision to add an additional class to his teaching load and received a reason for the reassignment, which the principal determined to be in the best interests of the school, no violation of rights is evident.

Thereafter, Appellant appealed to the local board. The matter was assigned to a hearing examiner who conducted a full evidentiary hearing. Based on his review of the case, the hearing examiner recommended that the decision of the Superintendent's designee be upheld. Specifically, the hearing examiner concluded that (1) decisions made with respect to Appellant's teaching assignment were reasonable, appropriate and based on valid considerations of class size and the teaching abilities of staff at Loch Raven; (2) the Superintendent complied with the procedural requirements for making class assignments contained in the Master Agreement between the local board and the Teachers' Association of Baltimore County; (3) the 1991 guidelines for Cooperative education were outdated, and were merely suggestions for teaching assignments that did not restrict or limit the Superintendent's discretion, nor that of the principal; and (4) because Appellant failed to present any evidence indicating that he was unable to teach the assigned courses for the 1998-99 school year, it was therefore appropriate for him to teach courses outside his certification given his experience and his demonstrated competence in teaching social studies.

The local board heard oral argument in this case on May 6, 1999. In a decision issued July 13, 1999, the local board adopted the Findings of Fact, Conclusions of Law and Recommendations of the Hearing Examiner, and upheld the decision of the Superintendent. In its decision, the local board stated in part:

A teacher's dissatisfaction with a teaching assignment does not outweigh what is deemed by school administrators to be in the best interest of the school. Administrators often have to make hard decisions on where to allocate staff and how to reduce class sizes throughout all academic areas. These decisions are not made within the context of making teachers happy, but are made as the needs of the school require.

The local board thus found no evidence of an arbitrary, unreasonable or illegal action by school

administrators in the assignment of Appellant's teaching schedule for the 1998-99 school year. This appeal followed.

ANALYSIS

As a preliminary matter, the local board contends that this appeal should be dismissed as moot. It is well established that a question is moot when, "there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the courts [or agency] can provide." *In Re Michael B.*, 345 Md. 232, 234 (1997); *See also Walter Chappas v. Montgomery County Board of Education*, 7 Op. MSBE 1068 (1998). This appeal concerns a matter of scheduling for the 1998-99 school year. That school year is now over, and the 1999-2000 school year is well under way. Additionally, Appellant who was out on sick leave from Loch Raven for the entire 1998-99 school year, never taught any of the classes on the teaching schedule. Moreover, Appellant was reassigned to a teaching position at Randallstown High School for the 1999-2000 school year, and no longer works at Loch Raven.² Therefore, we believe that this appeal is moot because there is no longer a controversy between the parties nor a remedy to provide.

Even if the State Board were to consider this appeal on the merits, we believe that the local board's decision was not arbitrary, unreasonable or illegal.³ The record provides sufficient evidence demonstrating that there was no violation of the Master Agreement, and that the principal did consult Appellant prior to advising him of his new class schedule, in accordance with Article XIV, Sections 14.7 and 14.7.1 of the Agreement.⁴ For example, Appellant was advised in writing that he might be needed to teach a course other than math for the 1998-99 school year,

²Although reassigned to a new school, the record discloses that Appellant continues on leave status. As of the date of this appeal, Appellant had not taught for the 1999-2000 school year.

³To the extent that Appellant has raised new issues on appeal to the State Board for the first time, those issues have been waived because they were not presented for review by the local board. *See, e.g., Chase Craven v. Board of Education of Montgomery County*, 7 Op. MSBE 870 (1997) (failure to challenge suspension before local board constituted waiver); *Theresa H. Fentress v. Howard County Board of Education*, 7 Op. MSBE 439 (1996) (failure to challenge 5-day suspension before the local board constituted waiver); *Earl Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1996) (failure to raise issue of age discrimination below constituted waiver of issue on appeal).

⁴Section 14.7 states, in pertinent part, that "[e]very teacher on active pay status shall be given a written notice of his/her proposed school assignment and general teaching responsibility . . . and given reasons for any change." Section 14.7.1 states, in pertinent part, that "[n]o teacher will be reassigned to different teaching responsibilities unless the principal has first conferred with the teacher, giving reasons for the proposed change and has considered the teacher's input."

and was asked to rank his preference between English, social studies, and science. Appellant selected social studies as his first choice and that is what he received. As stated in the local board decision:

It is overwhelmingly clear from the evidence before the Board that the three elements of Section 14.7.1 were satisfied: (1) Dr. Harmeyer had many meetings with the Appellant before and after class assignment; (2) Dr. Harmeyer stated clearly that the reason for the proposed change was to reduce class size; and (3) Dr. Harmeyer sought the Appellant's input regarding his teaching preference and followed the Appellant's request for assignment in Social Studies.⁵

See also Tr. 192-194.

With regard to the actual assignment of classes, section 6-201(b)(2) of the Education Article grants the local superintendent the authority to assign professional personnel to their positions in the schools and to transfer them as the needs of the schools require. *See, e.g., Joseph P. Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999); *Earl Hart v. Board of Education of St. Mary's County*, 7 Op. MSBE 740 (1997); *Chenoweth v. Board of Education of Baltimore County*, 7 Op. MSBE 197 (1995); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995). Furthermore, there is nothing in State regulation that would have prevented Appellant from teaching more than two classes outside of his certification areas in this instance. *See* COMAR 13A.12.02.02B.⁶

⁵Appellant now claims that principal Harmeyer's testimony is not credible. Determinations concerning witness credibility are within the province of the local board as trier of fact. *See, e.g., Board of Trustees v. Novik*, 87 Md. App. 308, 312 (1991), *aff'd*, 326 Md. 450 (1992) ("It is within the Examiner's province to resolve conflicting evidence. Where conflicting inferences can be drawn from the same evidence, it is for the Examiner to draw the inferences."); *Board of Education v. Paynter*, 303 Md. 22, 36 (1985)(same). The State Board may not substitute its judgment for that of the local board unless there is independent evidence in the record to support the reversal of a credibility decision. *See Dept. of Health & Mental Hygiene v. Anderson*, 100 Md. App. 283, 302-303 (1994); *Kaleisha Scheper v. Baltimore County Board of Education*, 7 Op. MSBE 1122 (1998); *Corey Williamson v. Board of Education of Anne Arundel County*, 7 Op. MSBE 649 (1997); *Mecca Warren v. Board of Education of Baltimore County*, 7 Op. MSBE 328 (1996). Appellant has not provided any evidence to support a reversal of the local board's credibility decision in this case.

⁶COMAR 13A.12.02.02B provides that a teacher who is assigned to teach more than two classes outside his area of certification shall retain the professional certificate, and for each consecutive year that the teacher is assigned more than two classes outside the certification area,

Based upon our review of the record, we find that Appellant was competent and capable of teaching his assigned classes at Loch Raven High School. As explained by the local board in its decision:

The Appellant's teaching assignment for the 1998-99 school year was to teach a course in cooperative education as well as three courses in U.S. History (T. 39) The other cooperative education teacher at Loch Raven High School, Ms. Knott, was also assigned to teach three courses in addition to her cooperative education course for the 1998-99 school year. (T. 69) Although the Appellant was not certified to teach social studies, he had previously taught social studies classes, including U.S. History, as recently as the 1994-95 school year. (T. 19; T. 144) The Appellant testified that, while dissatisfied with the teaching assignment, he was competent to teach the four classes assigned. (T. 74).

Finally, Appellant's claim that the school system violated the Administrative Guidelines for Cooperative Education Teacher-Coordinator's lacks merit. Apparently, these guidelines suggested that a cooperative education teacher with Appellant's cooperative program assignment should be assigned only two teaching periods a day when coordinating between 35 and 40 students. These guidelines, which were created in 1991 prior to the implementation of site based management in Baltimore County, appear to be outdated. Testimony at trial indicated that for various reasons, the guidelines do not have the same relevance that they did at one time. Tr. 118-119; 129. Moreover, the guidelines are not State or local law, regulation, or policy. Therefore they are not binding on the school system. At best, they are merely suggestions. Appellant even conceded during the hearing that the guidelines are not binding. Tr. 86. Accordingly, Appellant has not demonstrated that there was anything arbitrary, unreasonable or illegal about the scheduling decision.

CONCLUSION

For these reasons, we find that the appeal is moot. Alternatively, because the local board did not act arbitrarily, unreasonably, or illegally in this matter, we would affirm the Board of Education of Baltimore County.

Edward Andrews
President

Raymond V. Bartlett

the teacher shall earn semester hours toward certification in the out-of-area assignment before continuing the assignment.

JoAnn T. Bell

Philip S. Benzil

Reginald Dunn

George W. Fisher, Sr.

Marilyn D. Maulsby

Judith McHale

Edward Root

Walter Sondheim, Jr.

John Wisthoff

February 1, 2000