

ELSIE COLEMAN,

Appellant

v.

HOWARD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-40

OPINION

In this appeal, Appellant challenges her 1999 reassignment from the position of registrar to that of an instructional assistant at Wilde Lake High School in Howard County. The local board has submitted a motion for summary affirmance maintaining that its decision is not arbitrary, unreasonable, or illegal. Appellant has submitted an opposition to the motion.

FACTUAL BACKGROUND

Appellant was the registrar at Wilde Lake High School in Howard County for many years. At the conclusion of the 1998-99 school year, Roger L. Plunkett, the principal of Wilde Lake, advised Appellant that she was being reassigned from her registrar position to an instructional assistant position based on her job performance as evidenced by Appellant's 1998-99 evaluation in which she received an overall rating of "needs improvement."

The principal's narrative explanation that accompanied the evaluation noted that Appellant's failure to complete forms resulted in incomplete student transcripts with seniors' report cards showing incomplete credits. Moreover, Appellant had parents inappropriately completing grade forms. Some students had two different transcripts. One student had a registration and withdrawal form with the same date. In addition, Appellant was absent more than 20 days during the 1998-99 school year and had not learned several procedures necessary for her job.

Although transferring the Appellant to a lower paying position, the school system maintained Appellant's pay at the registrar level for one year, then paid her the appropriate equivalent salary of an instructional assistant. *See* Affidavit of Roger L. Plunkett. Appellant retired from employment with the school system in November, 2000.

Meanwhile, on July 13, 1999, Appellant's private legal counsel attempted to file a grievance concerning her reassignment. The general counsel for the school system advised Appellant's counsel that under State law only the Howard County Education Association/Educational Support Personnel (HCEA) representative or Ms. Coleman personally could file a grievance under the Howard County School System negotiated agreement with HCEA. Neither Ms. Coleman nor the HCEA filed a grievance at that time or at any time

thereafter.

Numerous pieces of correspondence between Appellant, her private attorney, and school system representatives ensued. In May 2000, Appellant filed a civil lawsuit against the Howard County Board of Education, the Howard County Government and the HCEA. The lawsuit was dismissed as to all parties.¹

On January 5, 2001, Appellant appealed the transfer decision to the superintendent who held a hearing on March 12, 2001, at which Appellant, her attorney Samuel Sperling, and general counsel for the local board were present. The superintendent determined that Appellant's appeal was untimely filed given that Appellant had received notice of her reassignment in June, 1999. The superintendent also noted that had the appeal been timely filed, he would have denied the claim because the transfer decision was reasonable and supported by the evidence. He stated: "Rather than terminating Ms. Coleman's employment, the school system offered her a re-assignment to another position. This was an opportunity for Ms. Coleman to remain employed and develop her skills. She refused this opportunity, and retired instead." See March 20, 2001 letter from O'Rourke to Sperling.

Thereafter, Appellant appealed to the local board. In a unanimous decision issued June 18, 2001, the local board denied the appeal based on the following:

- Appellant's appeal was untimely filed. The appeal involved a claim that the reassignment violated provisions of the collective bargaining agreement. Under the contract, such claims must be filed as grievances within 18 week days.
- Under Maryland law, the superintendent has wide latitude to reassign school staff.
- The fact that Appellant had prior good evaluations throughout her career does not preclude the possibility that she could receive an unsatisfactory one at some later date.
- Appellant did not satisfy her burden of proof that the reassignment decision was arbitrary, unreasonable or illegal.

¹Appellant alleges the local board and superintendent did not act in accordance with the mandate of the Circuit Court. However, there is no documentation in the record before the State Board that supports that allegation.

ANALYSIS

Right to Evidentiary Hearing

As a preliminary matter, Appellant requests a hearing to present additional evidence in this case. We note, however, that there is no statutory right to a hearing on a transfer dispute. Nor does due process require oral argument or an evidentiary hearing on issues that do not involve a genuine dispute of material fact. *See Michael Hethmon v. Prince George's County Board of Education*, 6 Op. MSBE 646, 648-649 (1993).

Based upon our review of the record, we find that Appellant's disagreement with the reassignment decision is insufficient to create a material dispute of fact which would warrant an evidentiary hearing.² Appellant was given sufficient opportunity to submit materials to the local board in support of her position, which she did. An appropriate record was thereby compiled. The local board has submitted a motion for summary affirmance supported by affidavit to the State Board. Although Appellant submitted an opposition to the local board's motion, Appellant has not provided an affidavit to counter that submitted by the local board. Thus as previously noted, we do not find that this record contains a genuine dispute of material fact that would trigger an evidentiary hearing. *See Ewing v. Cecil County Board of Education*, 6 Op. MSBE 818, 820 (1995). (Unsupported statements or conclusions are insufficient to create genuine dispute of material fact.)

Alleged Violation of Collective Bargaining Agreement

With regard to Appellant's claim that her reassignment violated the collective bargaining agreement, the local board noted that:

Any such claim must be processed as a "grievance" under the Collective Bargaining Agreement and the timeline for filing such a grievance (18 week days) has long since passed. Approximately 18 months elapsed from the event to the Appellant's appeal, without the filing of a grievance, and therefore the agreed upon timeline for filing a grievance has long since expired.

See Local Board Memorandum in Support of Motion for Summary Affirmance (emphasis in original). There is no evidence in the record to support Appellant's claim that the union did not

²In one piece of correspondence Appellant claims her transfer was in retaliation for her compliance with an investigation into the residency of a student who attended the school where she was registrar. However, there is no other evidence in the record to support this assertion.

process her grievance in a timely fashion. Moreover, Appellant could have filed it herself.³ Based upon our review of the record, we believe Appellant was not diligent in pursuing her case or exhausting her available remedies. *See, e.g., Scott v. Board of Education of Prince George's County*, 3 Op. MSBE 139 (1983) (Time limitations are generally mandatory and will not be overlooked except in extraordinary circumstances such as fraud or lack of notice).

Appellant relies on *Jenkins v. Wm. Schluderberg-T.J. Kurdle Co.*, 217 Md. 556 (1958), to support the proposition that she is entitled to seek effectuation of her rights under the collective bargaining agreement through means other than the grievance procedure. In *Jenkins*, the court held that although generally the grievance procedures provided by a collective bargaining agreement should bar suits by individuals against the employer based upon alleged violation of the agreement, such suits are not barred if the union acted unfairly towards the employee in refusing to press the employee's claim. *Jenkins* is inapposite here as it did not involve a union of local school system employees in an administrative proceeding. *See, e.g., Educ. § 6-514*. Rather it involved the Amalgamated Meat Cutters and Butcher Workmen of North America, a national union, in a proceeding in State court. Moreover, even if *Jenkins* were applicable, there is no evidence that the HCEA acted unfairly in processing Appellant's case.

Reassignment Decision

As to Appellant's reassignment to the instructional assistant position, it is well established that there is no entitlement to any position within the school system. The superintendent has discretion to assign personnel and transfer them as the needs of the schools require. *See Md. Code Ann., Educ. §6-201. See also Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff'd*. 107 Md. App. 286 (1995); *Britner v. Washington County Board of Education*, 7 Op. MSBE 946 (1998); (upholding reassignment of instructional assistant from one school to another).

The record in this case discloses that Appellant's reassignment was triggered by her poor performance as a registrar. As stated by the principal in his affidavit:

³Likewise, it appears that Appellant failed to timely challenge her 1998-99 performance evaluation. While Appellant's representatives may have been pursuing other avenues of redress, those avenues are separate and distinct from filing an administrative appeal to challenge an unsatisfactory evaluation. The filing of other actions does not stay the filing of an appeal or excuse the failure to bring a matter for review in a timely fashion. The State Board has previously declined to review matters that are untimely filed at the local level. *See Shaver v. Howard County Board of Education*, MSBE Opinion No. 00-6 (February 1, 2000) (affirming local board's denial of appeal based on untimeliness); *Brocato v. Board of Education of Baltimore County*, 7 Op. MSBE 756 (1997) (decision untimely appealed to local board cannot be subject to State Board appeal); *Jackson v. Frederick County Board of Education*, 6 Op. MSBE 838 (1995) (upholding local board's dismissal of appeal based on untimeliness).

In the 1998-99 school year I observed the Appellant's performance and rated her in her year-end evaluation as being unsatisfactory and needing improvement in several areas. Specifically, I assessed her performance as unsatisfactory in the areas of communication skills and attendance and punctuality. I assessed her as needing improvement in the areas of quality of work, quantity of work, organizational skills, job knowledge, initiative, and judgment. Overall I assessed her performance as "needs improvement". I also provided Ms. Coleman with a narrative explanation of my assessment and of her substandard performance in the areas of quality of work, attendance and punctuality, and job knowledge and initiative. I had during the year apprised Ms. Coleman of these concerns.

CONCLUSION

For all of these reasons, we find that Appellant's transfer was based on legitimate and documented performance problems. Accordingly, finding that the local board's decision was not arbitrary, unreasonable or illegal, we affirm the decision of the Board of Education of Howard County.

Raymond V. Bartlett
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December 5, 2001