

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GENE BREWER,)
Appellant,)
v.) CASE NO. 1985-44
CAMDEN COUNTY BOARD OF EDUCATION,)
Appellee.)

O R D E R

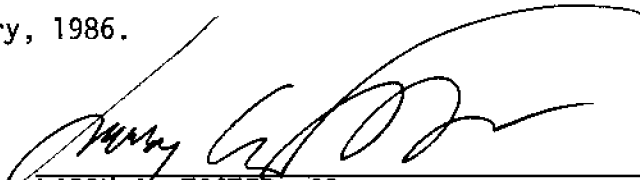
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Camden County Board of Education does not have the authority under O.C.G.A. §20-2-290 to employ as a principal an employee who has not been recommended for the position by the local superintendent, and

DETERMINES AND ORDERS, that the decision of the Camden County Board of Education herein appealed from is hereby reversed.

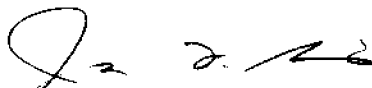
Mr. Owens was not present.

This 13th day of February, 1986.


LARRY A. FOSTER, SR.
Vice Chairman for Appeals

Concurring Opinion

I agree with the decision of the State Board of Education, but I feel it is necessary to point out that in the absence of a recommendation from the local superintendent, the local board has other avenues available to fulfill its responsibilities for managing the local schools.


JAMES F. SMITH
Chairman

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GENE BREWER,)	
)	
Appellant,)	
)	CASE NO. 1985-44
v.)	
)	
CAMDEN COUNTY BOARD)	
OF EDUCATION,)	
)	RECOMMENDATION OF
Appellee.)	STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Gene Brewer, Superintendent of the Camden County School System (hereinafter "Appellant") from a decision of the Camden County Board of Education (hereinafter "Local Board") placing an employee in a principal's position at St. Mary's Elementary School (hereinafter "St. Mary's") without Appellant's recommendation. Appellant contends on appeal that the Local Board did not have the authority to elect Richard Wilson as principal of St. Mary's over his objection, that there existed a conflict of interest on the part of board members whose immediate family members might be affected by their decision, and that Appellant's choice for the St. Mary's position was more qualified than Richard Wilson.

PART II

FACTUAL BACKGROUND

On or about July 26, 1985, the principal of St. Mary's resigned his position. Appellant conducted a selection process

and on August 22, 1985, recommended to the Local Board that Jane Bowery be promoted from her position as assistant principal of St. Mary's to the principal position recently vacated. No action was taken on Appellant's recommendation and the Local Board held a meeting on August 26, 1985, at which Appellant again recommended Jane Bowery. The Local Board took no action on that recommendation. Subsequently, several other board meetings were held with the final meeting resulting in a decision by the Local Board to assign Richard Wilson to the principal position at St. Mary's without Appellant's recommendation. Mr. Wilson was currently under contract with the Local Board and had served as assistant principal of Woodbine Elementary and principal of Bowles Elementary.

Appellant requested a hearing before the Local Board based upon the facts stated above, contending that the Local Board did not have the authority to assign Richard Wilson to the principalship of St. Mary's without his recommendation.

At the hearing, the Superintendent testified that, although both Mr. Wilson and Ms. Bowery were qualified to be principal of St. Mary's, he recommended Ms. Bowery because she was the best qualified based upon her recency of study, her strong curriculum background, and her having been familiar with St. Mary's and its staff as assistant principal the year before. Mr. Wilson testified that he had written a letter to Appellant stating that he did not want to be considered for the principal's position but that the letter was a result of an indication by

Appellant that he would not be given that position. Mr. Wilson testified he wrote the letter hoping to obtain another promotion to vice-principal of the high school because he would rather have the vice-principal position than nothing at all.

The Local Board issued its decision on November 4, 1985, finding that where, as in this case, the Appellant refused to provide the Local Board with another recommendation to fill the St. Mary's principalship after the Local Board requested another recommendation, the Local Board was authorized to transfer Richard Wilson from his previous positions as assistant principal of Woodbine and principal of Bowles Elementary to principal of St. Mary's. It is this decision Appellant requests the State Board of Education to reverse.

PART III

DISCUSSION

Appellant contends first on appeal that the Local Board did not have the authority to elect Richard Wilson as principal of St. Mary's without his recommendation. He contends that O.C.G.A. §20-2-290 which states in part:

All teachers, principals ... shall be employed by local boards of education on the recommendation of the school superintendent of the local unit, ...

prohibits the Local Board from assigning Richard Wilson to the principalship of St. Mary's without his recommendation. Appellant further states that the Local Board's position that it was a transfer is not applicable to the facts of this case and

that the action of the Local Board jeopardizes the accreditation of the school system.

Under the facts of this case, O.C.G.A. §20-2-290 does not require reversal of the Local Board's actions. Richard Wilson was already in the position of an employee with the Local Board for the 1985-86 school year. Without evidence to the contrary, it must be presumed that he was properly employed, i.e., on the recommendation of the Appellant. O.C.G.A. §20-2-290 requires the recommendation of a superintendent to newly employ personnel but that code section only applies to newly hired employees. In this case, Richard Wilson was already employed for the 1985-86 school year and, thus, O.C.G.A. §20-2-290 is not applicable.

Appellant's position that the Local Board's statement that the action was a transfer is not applicable and that the action of the Local Board jeopardized the accreditation of the school system also does not require reversal of the Local Board's decision. Appellant simply states that the action was not a transfer but did not present any evidence to support that contention. The Hearing Officer is not aware of any reason why the Local Board's action could not be considered a transfer and Appellant has not provided any reason why the Local Board does not have the authority to make a transfer. Under Georgia's Constitution, the control and management of a local school system is under the Local Board of Education. Ga. Const. 1983 Ar. VIII, §V, p. I. While Appellant's statutory authority (O.C.G.A. §20-2-290) and case law authority (Tripp v. Martin,

210 Ga. 284 (1954)) would appear to limit the authority of the Local Board to hire new personnel, Appellant has not presented any authority limiting the authority of the Local Board to assign Richard Wilson, a current employee, to the St. Mary's principalship. No issue regarding accreditation was raised before the Local Board and, thus, that issue cannot be raised on appeal. Sharples v. Hall Cnty. Bd. of Ed., 251 Ga. 54 (1983); Owen v. Long Cnty. Bd. of Ed., 245 Ga. 647 (1980); Poney v. County Bd. of Ed., 203 Ga. 152 (1947).

Appellant's second contention is that some members of the Local Board participated in electing Richard Wilson when Richard Wilson would be in a position to supervise the spouse or immediate family of that school board member. Appellant does not cite any authority for this conflict or make it clear why such a situation would warrant reversal, and the Hearing Officer concludes that a conflict warranting reversal does not exist.

Appellant's final contention is that Jane Bowery was more qualified than Richard Wilson to hold the St. Mary's principalship. The issue decided by the Local Board was that they had the authority to transfer Richard Wilson into the position without the recommendation of the Appellant. Appellant has presented no authority that the Local Board was obligated to place the most qualified individual in the St. Mary's principalship. Additionally, the Local Board would have the authority to decide who is the most qualified and the evidence did not demand a

finding that Jane Bowery was more qualified than Richard Wilson. Thus, Appellant's final argument does not warrant reversal of the decision of the Local Board.

PART IV

RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the Hearing Officer is of the opinion the Local Board had the authority to place Richard Wilson in the St. Mary's principalship.

The Hearing Officer, therefore, recommends the decision of the Local Board be

SUSTAINED.



L. O. PUCKLAND
STATE HEARING OFFICER