

STATE BOARD OF EDUCATION
STATE OF GEORGIA

LUANNE CROMER,	:	
	:	
Appellant,	:	
v.	:	
	:	CASE NO. 1991-29
POLK COUNTY	:	DECISION
	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Luanne Cromer (“Appellant”) from a decision by the Polk County Board of Education (“Local Board”) to deny her a hearing on her transfer from her position as assistant principal at the Elm Street Middle School to a position as administrative assistant principal at the Cedartown High School. Appellant maintains that the Local Board has denied her due process rights by not granting her a hearing. The appeal is dismissed.

Since the Local Board did not hold a hearing, the following factual description is based upon the documents presented by the parties as part of the appeal. The documents consist primarily of the Local Board’s minutes and letters exchanged between the Local Superintendent and Appellant’s counsel.

Sometime before July 18, 1991, the Local Superintendent became aware of a personnel problem at the Elm Street Middle School. The Local Superintendent investigated the problem and made a report to the Local Board. He recommended Appellant’s transfer from her position as assistant principal at Elm Street Middle School. Appellant requested an opportunity to address the Local Board.

On August 12, 1991, the Local Board met in special session and voted to grant Appellant the opportunity to be heard at the regular meeting on August 13, 1991. On August 13, 1991, the Local Board voted to grant Appellant a formal hearing. On August 20, 1991, the Local Board met in special session and voted to rescind its vote to grant Appellant a formal hearing. The Local Board then voted to have the Professional Practices Commission investigate the transfer. In another special session on August 27, 1991, the Local Board voted to withdraw the request to the Professional Practices Commission. The Local Board also voted that “no further hearing action be held or initiated by the Board regarding the Superintendent’s personnel changes involving...[Appellant].” Appellant then filed an appeal with the State Board of Education.

O. C. G. A. § 20-2-1160 provides that local boards of education can sit as tribunals to decide questions involving the interpretation or administration of school law. Any party aggrieved the decisions of a local board sitting as a tribunal can appeal to the State Board of Education. O. C. G. A. § 20-2-943 (b) provides that the provisions of the Fair Dismissal Law do not apply to transfers. As a result, a teacher can only look to O. C. G. A. § 20-2-1160 to provide a basis for an appeal to the State Board of Education when a transfer is questioned. The local board, however, must conduct a hearing before the State Board of Education can assume jurisdiction to review the decision.

In Wilner v. Fulton Cnty. Bd of Educ., Case No. 1991-6 (SBE. Apr. 4, 1991), *aff'd*, Fulton Cnty. Bd. of Educ. v. Wilner, Civil Action No. D-90210 (Fulton Sup. Ct., July 2, 1991), the State Board of Education reversed a local board decision to transfer a teacher as part of a disciplinary action. The appeal to the State Board of Education, however, arose under the provisions of the Fair Dismissal Act.

Appellant claims that the Local Board denied her due process rights by not granting her a hearing. She maintains that the Local Board's decision was arbitrary and capricious and did not serve a legitimate administrative interest. Appellant argues that in the absence of a record, the State Board of Education must consider her allegations of an improper transfer as true. Additionally, Appellant argues that the State Board of Education assumed jurisdiction in the Wilner case when the local board did not hold a hearing concerning the teacher's transfer.

We do not view Wilner as precedent for the State Board of Education to assume jurisdiction in the absence of a hearing. In Wilner, the local board had a disciplinary tribunal hearing. Both the disciplinary tribunal and the local board refused to consider whether a transfer related to the disciplinary action was appropriate. The disciplinary tribunal, however, permitted the teacher to offer evidence about the transfer. Thus, a disciplinary hearing was held and the State Board of Education had jurisdiction to consider the matter under the Fair Dismissal Law. Since the Local Board has not conducted a hearing in the instant case, the State Board of Education does not have any jurisdiction to consider Appellant's appeal under the provisions of O.C.G.A. § 20-2-1160.

The transfer of a teacher is an administrative decision that is uniquely within the province and discretion of a local board of education. The Legislature granted local boards of education the flexibility of making transfers without a hearing. Teachers who need an opportunity to challenge a local board's actions if the local board acts improperly cannot look to the State Board of Education if the local board does not hold a hearing. A teacher, therefore, has to file an action in court to challenge the local board's decision. The State Board of Education, therefore, concludes that this appeal should be dismissed.

Based upon the foregoing, the State Board of Education is of the opinion that it does not have jurisdiction to consider Appellant's appeal because the Local Board did not conduct a hearing and was not required to conduct a hearing. Appellant's appeal, therefore, is hereby

DISMISSED.

This day of January, 1992.

Mr. Brinson was not present.

James H. Blanchard
Vice Chairman for Appeals