STATE BOARD OF EDUCATION
STATE OF GEORGIA

NIZA LEE DAVIS,	:	
	:	
Appellant,	:	
	:	**CASE NO 1991-31**
vs.		
		DECISION
MILLER COUNTY BOARD OF EDUCATION,		
Appellee.		

This is an appeal by Niza Lee Davis ("Appellant") from a decision by the Miller County Board of Education ("Local Board"). The main question is whether she was demoted when the Local Board upheld her transfer from the position of principal to the position of assistant principal without any reduction in her salary. The decision of the Local Board is sustained.

Appellant has been employed by the Local Board for 54 years. From 1971 through the end of the 1985-1986 school year, she served as an assistant principal in the elementary school, grades K-3. From the 1986-1987 school year through the 1990-1991 school year, she served as the principal of the elementary school, grades K-3.

Because of state law governing the size of schools, in April, 1991, the Local Board reorganized the school system by combining three schools into two schools. The middle school, grades 4-7, was eliminated. The elementary school was enlarged from grades K-3 to include grades K-S. The high school was changed from grades 8-12 to grades 6-12. The Local Superintendent talked with Appellant about her serving as co-principal of the elementary school in charge of grades K-2, with Buddy Grimes serving as co-principal in charge of grades 3-5. Appellant refused to serve as a co-principal and the Local Superintendent decided to assign Mr. Grimes as the principal and Appellant as assistant principal. The Local Superintendent made his decision because Mr. Grimes received his AS-S certificate in 1976, whereas Appellant received her L-5 certificate in 1980. Additionally, the Local Superintendent thought that Mr. Grimes had served in both the position of assistant principal and the position of principal for longer periods than Appellant had served in either position. Also, Mr. Grimes was serving as a principal in 1986 before Appellant obtained her position as principal.[1]

---

[1] Appellant served as an elementary school principal from 1951 through 1959 and then resumed teaching. She later served as an assistant principal from 1971 through November, 1986. In November, 1986, she accepted the position of principal of the elementary school when that position became available.

At the Local Board's meeting on May 27, 1991, it adopted the new organizational plan, named the principal of the middle school as the principal of the new elementary school, and named Appellant as the assistant principal of the new elementary school.

Appellant attended the May 27, 1991, meeting and was aware of her appointment as assistant principal. Notwithstanding and for some unexplained reason, on the following day Appellant received a contract from the Local Superintendent for the position of principal. Appellant signed the contract on May 30, 1991, and returned it to the Local Superintendent. The contract was not signed by the Local Superintendent. The Local Superintendent, nevertheless, assigned Appellant to the position of assistant principal of the elementary school at the same salary set forth in the contract she was given on May 28, 1991.

Appellant filed a grievance in accordance with the Local Board's policies. Appellant contended that under Local Board policy, the Local Superintendent should have recommended her for the position of principal of the reorganized elementary school. After the Local Superintendent decided that his assignment recommendations to the Local Board complied with Local Board policy and state law and that Appellant had not been demoted, Appellant appealed to the Local Board. The Local Board granted Appellant a hearing under the provisions of O.C.G.A. § 20-2-1160.

At the hearing, both sides called witnesses, presented evidence, and cross-examined the witnesses of the other side. Neither side was limited in the scope of the evidence it presented. At the conclusion of the hearing, the Local Board voted to uphold the Local Superintendent's decision. This appeal followed.

Appellant asks the State Board of Education to reverse the Local Board's decision and place her in the position of elementary school principal because the Local Board and the Local Superintendent violated the Local Board's policy that governs transfers and demotions. Appellant also claims that she should have a hearing under the provisions of O.C.G.A. § 20-2-940 on the applicability of the Local Board's policy that covers demotions or terminations. The Local Board contends that its policy is inapplicable because Appellant was not demoted since her salary was not reduced.

The Local Board's Policy GBKA covers demotions and terminations that occur because of reductions in the number of employees because of changes in the size of the student population, budget limits, curriculum changes, or because of the consolidation of positions. The policy assigns points for years of service and for the level of professional certification. Under the policy, Appellant has more points than the person assigned to be principal of the elementary school. If Appellant was not demoted, then the policy is inapplicable and the Local Board is governed by a standard of reasonableness.

Under O.C.G.A. § 20-2-943, a demotion occurs only if there is a reduction in pay, prestige, and responsibility; all three elements have to be reduced. Rockdale City School District v. Weil, 245 Ga. 730, 266 S.E.2d 919 (1980). The Local Board argues that Appellant was not demoted because she is drawing the same salary offered to her in the contract she signed on May

30, 1991. In the absence of a reduction in pay, the Local Board argues that a principal element of a demotion is missing.

In Ellis-Adams v. Whitfield County Bd. of Ed., 182 Ga. App. 463, 356 S.E.2d 219 (1987), the Court examined the issue of what constitutes a reduction in pay. The Court stated that

> in determining whether a decrease in pay has taken place, we must look to the totality of the circumstances to see whether there has been a measurable adverse impact on the employee's pay. Determining factors must go beyond mere cosmetic changes, and may include but are not limited to failure to provide normal increments of pay, downward adjustments in pay, decreased working hours, and decreases in employee benefits.

182 Ga. App. at 465. The question in Ellis-Adams was whether the teacher had been demoted when she was transferred to another position with the same pay scale as she received before her transfer. In Ellis-Adams, as in this case, the local superintendent agreed to pay the employee the same pay she had received before the transfer. However, the Court ruled that she suffered a reduction in pay because she would have earned an additional $3,232.80 if she had remained in the previous position.

In the instant case, there is no evidence that Appellant would have earned any more during the current year than she would earn as principal. Under current state funding provisions, local school systems receive an additional $3,000.00 for principals than for assistant principals.

Although the Local Board is paying Appellant under her contract as a principal, Appellant maintains that there is nothing to prevent the Local Board from reducing her pay. Her contract contains a section that provides

> [the] salary specified [in the contract] may be subject to adjustment according to the Official Code of Georgia Annotated, Title 20, applicable to the classification and type of service to which the employee has been assigned, without obligation by the employer to make up any deficit beyond such sum as shall become uniformly applicable to all employees of the same group, classification, type and length of service, as determined by any law or laws now or hereinafter in operation regulating the financing of public school systems.

R-2. Notwithstanding, Appellant is serving under a contract as a principal and is receiving the same pay she would receive if she was named to the position of principal. Appellant, therefore, has not suffered a reduction in pay. Appellant, therefore, has not been demoted. The possibility that some future event may occur does not alter the present circumstances.

Appellant's main concern is that in some future year the Local Board will reduce her salary because she is serving as an assistant principal. If she then claims that she was demoted, the Local Board will then argue that only her pay was reduced and not her responsibility or prestige so she would not then have been demoted.[2] Appellant contends that as a result she would

[2] Among the school law bar, this has been referred to as a "slow motion demotion".

not have any recourse. Appellant has a very valid concern. We, however, can only face that issue if it occurs. For now, we only hold that Appellant has not been demoted. We believe the main lesson from Ellis-Adams, *supra,* is that it is necessary to look at the totality of the circumstances to decide whether a demotion has occurred. In this case, it does not appear that Appellant's salary was reduced in any manner, therefore, Appellant was not demoted.

The State Board of Education is of the opinion that Appellant was not demoted because she is still receiving the same salary as she would have received as principal. The Local Board, therefore, did not have to follow its Policy GBKA and appoint Appellant as the principal of the consolidated elementary school. The Local Board's decision, therefore, is hereby

SUSTAINED.

This 12th day of March, 1992.

Mr. Brinson was absent. Mr. Owens voted to reverse the decision of the Miller County Board of Education.

James H. Blanchard
Vice Chairman for Appeals