

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

BARBARA SETCHEL,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2010-63
	:	
HART COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Barbara Setchel from a decision by the Hart County Board of Education (“Local Board”) which found that Appellant was not demoted in violation of the Fair Dismissal Act. Appellant contends that her rights were violated under the Fair Dismissal Act because she was demoted, and because her salary supplement was improperly eliminated. For the reasons set forth below, the decision of the Local Board is sustained.

I. BACKGROUND

Appellant began her employment with the Local Board for the 1987-1988 school year. For the 1991-1992 school year, Appellant was promoted to Assistant Principal and remained in that position until February of 2004. In February of 2004, Appellant was promoted to the position of Principal at North Hart. Appellant remained the Principal of North Hart through the 2008-2009 school year. On or about February 12, 2009, the Superintendent for the Local Board notified Appellant that her annual contract as Principal of North Hart for the 2009-2010 school year was not being renewed. The Local Board offered Appellant a contract as a teacher at the salary of an Assistant Principal for the 2009-2010 school year. Appellant accepted the teacher contract.

Meanwhile, Appellant appealed the decision of the Local Board regarding the nonrenewal of her contract as Principal, and on the basis that she was demoted in violation of the Fair Dismissal Act. The Local Board denied Appellant a hearing on the nonrenewal of her Principal contract because Appellant did not have a continued right to employment as a Principal under the Fair Dismissal Act. The Local Board agreed to provide Appellant a hearing on the issue of whether she had been involuntarily promoted to Principal. Appellant then withdrew her request for a hearing. Later, Appellant requested a hearing on the issue of whether she had been improperly demoted. The Local Board agreed to provide Appellant a hearing based upon the previously submitted briefs and record. After considering Appellant’s appeal, the Local Board found that Appellant was not demoted. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. ERRORS ASSERTED ON APPEAL

A. Demotion.

Appellant contends that she was demoted in violation of O.C.G.A. § 20-2-942(a)(2)(C). In order to constitute a demotion under O.C.G.A. § 20-2-942(a)(2)(C) for purposes of protection under the Fair Dismissal Act, the position the employee is demoted to must be one with “less responsibility, prestige, and salary” than the position the employee is demoted from. The rights provided to an employee under this provision are based upon the employee’s rights under the Fair Dismissal Act. Pursuant to O.C.G.A. § 20-2-942(c)(1)(A), Appellant retained rights “in that administrative position, which [she] held immediately prior to [April 7, 1995].”

In this case, Appellant held the position of Assistant Principal prior to April 7, 1995, and Principal after April 7, 1995. Thus, Appellant’s rights to continued employment are in the position of Assistant Principal. Thus, the issue before this Board is whether Appellant’s teacher contract constitutes a demotion. The parties do not dispute that the position of teacher has less responsibility and prestige compared to the position of Assistant Principal. However, in order to constitute a demotion, the new position must also be at a lower salary. Rockdale County School Dist., 245 Ga. 730, 732 (1980).

Appellant contends¹ that her salary is lower than her salary for the prior year, when she was a Principal. The Local Board² contends that the salary is not lower because Appellant is being paid at the same salary as an Assistant Principal – the position in which Appellant has continued rights to employment. This Board agrees with the Local Board that since Appellant’s continued rights to employment are in the position of Assistant Principal, that in order to constitute a demotion that the salary must be less than the salary for the position of Assistant

¹ In support of her position, Appellant relies upon Ellis-Adams v. Whitfield County Bd. of Educ., 182 Ga. App. 463 (1987) and Siler v. Hancock County Bd. of Educ., 510 F. Supp. 2d (M.D. Ga. 2007), aff’d, 272 Fed. Appx. 881 (11th Cir. 2008). However, these cases are inapplicable to this case. First, in Ellis-Adams, the employee provided evidence that she would make less money than the previous school year. In this case, Appellant is making the same salary as an Assistant Principal – the position in which she has continued rights to employment. Furthermore, Siler addressed whether the employee’s transfer constituted an adverse employment action under Title VII, not whether the employee suffered a demotion as defined by the Fair Dismissal Act.

² Based upon the record below, Appellant previously contended that she was “involuntarily transferred or assigned” to the position of Principal. Under such circumstances, Appellant’s continued rights to employment would lie in the position of Principal pursuant to O.C.G.A. § 20-2-942(c)(1)(B). Appellant appears to have abandoned this issue. Nevertheless, the Local Board has addressed this issue. Based upon the record before the State Board, the State Board finds that the record contains sufficient evidence showing that Appellant voluntarily accepted the position of Principal in 2004, and continued to do so through the 2008-2009 school year. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978).

Principal. Therefore, the Local Board did not violate Appellant's rights under the Fair Dismissal Act.

B. Elimination of the Local Supplement.

Appellant contends that the Local Board violated her rights by unilaterally eliminating her salary supplement without following the prescribed process. However, this Board only has jurisdiction over issues heard and decided by the Local Board. Owen v. Long County Bd. of Ed., 245 Ga. 647, 649 (1980); Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983); Boney v. County Bd. of Ed. Of Telfair County, 203 Ga. 152, 153 (1947). The Appellant did not appeal this issue to the Local Board. Furthermore, the Local Board did not hear and decide this issue. Thus, this issue is not properly before this Board.

III. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, SUSTAINED.

This _____ day of May 2010.

WILLIAM BRADLEY BRYANT
VICE CHAIRMAN FOR APPEALS