STATE BOARD OF EDUCATION STATE OF GEORGIA

LUCY SWAIN, :

Appellant,

: CASE NO 1992-5

vs. :

: DECISION

WALTON COUNTY : BOARD OF EDUCATION. :

:

Appellee. :

This is an appeal by Lucy Swain ("Appellant") from a decision by the Walton County Board of Education ("Local Board") to uphold the decision of the Local Superintendent to transfer Appellant from the position of counselor to teacher in the in-school—suspension program ("155"). Appellant claims that she was demoted without the opportunity to have a hearing as required by O.C.G.A. § 20-2-940, and that she was transferred as a punitive measure contrary to the decision in *Wilner v. Fulton County Bd. of Educ.*, Case No. 1991-6 (Ga. SBE, Apr. 11, 1991), *aff'd Fulton County Bd. of Educ. v. Wilner*. Civil Action No. D-90210 (Fulton Superior Ct., Jul. 2, 1991). The decision of the Local Board is sustained.

On April 15, 1991, Appellant received a contract as a counselor at Monroe Area High School. She had served as counselor for four years. As a counselor, she received an additional pay supplement. In July, 1991, the Local Board approved the Local Superintendent's request to hire another counselor and transfer Appellant to the position of teacher in the 155. Appellant learned about the transfer on July 28, 1991. Appellant then filed a grievance to seek reinstatement in her position as counselor. The Local Superintendent upheld the transfer and the matter was appealed to the Local Board. The Local Board held a hearing on November 5, 1991. At the conclusion of the hearing, the Local Board voted to sustain the transfer. Appellant then filed an appeal with the State Board of Education under the provisions of State Board of Education Rule No. 160-1-3-.0l and O.C.G.A. § 20-2-1160.

On appeal, Appellant claims she was demoted without the opportunity to have a hearing as required by O.C.G.A. § 20-2-940; 20-2-943. Although the record shows that Appellant did not suffer a reduction in pay, she claims she will suffer a reduction in pay when her contract is renewed for the 1992-1993 school year because she will be unable to receive the supplemental salary she received as a counselor. Appellant's claim, however, relies upon speculation about a future action. Appellant was not demoted because she did not suffer a reduction in pay. If she

suffers a reduction in pay because of the loss of her counselor supplement in the future, Appellant will be entitled to a hearing. See, *Cromer v. Polk County Bd. of Educ.*, Case No. 1991-29 (Ga. SBE, Jan. 9, 1992).

Appellant also claims that her transfer was punitive and contrary to the State Board of Education's decision in *Wilner* v. *Fulton County Bd. of Educ., supra* (transfers are not a permitted form of discipline). During the hearing before the Local Board, the principal testified that he decided to move Appellant to the *ISS* position because she was not a "team player" because she would not "go along with the direction that we were trying to take the school—she had her own agenda, her own methodology that she wanted to go about rather than what we wanted to do." The principal stated that Appellant had the skills necessary to be effective in the 155 program. The principal also testified that Appellant had been insubordinate, but the insubordination was inconsequential and not repeated. On Appellant's evaluation, the principal did not give Appellant any unsatisfactory ratings. Appellant, however, claims that the principal transferred her in retaliation for her insubordination.

Unlike *Wilner, supra*, this case does not present clear evidence that Appellant's transfer was disciplinary. Instead, there is evidence that the transfer was made to further the best interests of the school system. The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). We, therefore, conclude that Appellant's transfer was not punitive.

Based upon the foregoing, the State Board of Education is of the opinion that Appellant was not demoted because she has not suffered a loss in pay. Additionally, Appellant was not transferred as a disciplinary measure. The decision of the Local Board, therefore, is

SUSTAINED.

This 14th day of May, 1992.

Mr. Brinson and Mr. Sears were not present..

James H. Blanchard Vice Chairman for Appeals