

STATE BOARD OF EDUCATION

STATE OF GEORGIA

DAVID BAKER,	:	
	:	
Appellant,	:	
v.	:	CASE NO. 1992-27
APPLING COUNTY	:	
	:	DECISION
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by David Baker (“Appellant”) from a decision by the Appling County Board of Education (“Local Board”) to transfer him from his position as assistant principal at the Appling County Elementary School to the position of assistant principal at the Altamaha Elementary School. Appellant claims that the Local Board improperly transferred him as a disciplinary measure. We sustain the Local Board’s decision.

On April 10, 1992, Appellant received a letter from the Local Superintendent which stated that he would be rehired for the next school year, but he would not be rehired in his position as assistant principal at the Appling County Elementary School because “some board members said they had been called by some teachers who said that you harassed and abused them.” Appellant requested a list of charges and a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-940 et seq. (the Fair Dismissal Act).

The Local Board refused to grant Appellant a hearing under O.C.G.A. § 20-2-940. Instead, Appellant received a notice that the Local Board would give him an opportunity to address them at its next meeting on July 9, 1992. Appellant appeared at the July 9, 1992, meeting with his attorney and objected to the proceedings. The Local Board, nevertheless, proceeded with the hearing after a motion to dismiss failed to obtain approval when the Local Board evenly divided on the question.¹

¹ Under O.C.G.A. § 20—2-1160, any party aggrieved by a decision of a local board of education can appeal the decision and obtain a hearing. The hearing in the instant case, therefore, was a hearing under O.C.G.A. § 20-2-1160 rather than a hearing under O.C.G.A. § 20-2-940.

At the hearing before the Local Board, it was established that Appellant's principal and the Local Superintendent had both recommended renewal of Appellant's contract as assistant principal at the Appling County Elementary School and that his performance had been satisfactory. There was no evidence presented concerning the charges purportedly made by the teachers.

Appellant claims that his right to due process was violated because the Local Board did not follow the procedures required under O.C.G.A. § 20-2-940.² Additionally, Appellant claims his transfer was a punitive measure that is prohibited under Wilner v. Fulton Cnty. Bd. of Educ., Case No. 1991-6 (Ga. SBE, Apr. 11, 1991); aff'd Fulton Cnty. Bd. of Educ. v. Wilner, Civil Action D-90210 (Fulton Superior Ct., July 2, 1991). The Local Board claims that the transfer was not punitive and that O.C.G.A. § 20-2-940 is inapplicable because Appellant was not being terminated, non-renewed, or demoted.

O.C.G.A. § 20-2-943(b) specifically provides that the Fair Dismissal Act does not apply to transfers. The Act provides:

Nothing in this part shall be construed as depriving local boards of education and other school officials from assigning and reassigning teachers and other certificated professional employees from one school to another or from assigning and reassigning teachers to teach different classes or subjects.

In Wilner, the local board of education held a hearing under O.C.G.A. § 20-2-940 and found the teacher guilty of incompetence. The board of education sanctioned the teacher by transferring him to another school. Both the State Board of Education and a superior court held that a board of education could not transfer a teacher as a punitive measure.

In Wright v. Newton Cnty. Bd. of Educ., Case No. 1991-27 (Ga. SBE, Nov. 14, 1991), the State Board of Education ruled that the burden of proof was upon a teacher to establish that a transfer was punitive. The State Board wrote:

Local boards of education need the flexibility of transfers to efficiently manage their schools. In our view, the need for flexibility was the reason why the Legislature exempted transfers from the hearing process. Thus, only in limited circumstances, such as those found in Wilner, will a transfer ever result in creating a reason for holding a hearing.

As an administrative action, the decision to transfer a teacher is not subject to review except when the transfer is made to discipline a teacher. The burden is then on the teacher to establish that the transfer was improper; the local board does not have the burden of establishing that the transfer was proper.

In the instant case, the evidence shows that Appellant was transferred because some Local Board members had received complaints about Appellant's performance. The charges were unsubstantiated and Appellant's performance was rated satisfactory by his principal and the Local Superintendent. The Local Board did not make any findings concerning the charges. Instead, the transfer was deemed to be "in the best interests" of the school system.

² O.C.G.A. § 20-2-940 requires, among other things, a list of charges and a list of witnesses. Neither of these were provided Appellant.

Assuming the Local Board members had not commented that some teachers were upset with Appellant's supervision methods, there is no question that the Local Board could transfer Appellant to a new position without a hearing under the provisions of O.C.G.A. § 20-2-940(d). Does the fact that a Local Board member made an unsubstantiated comment change the outcome? We think not. In the absence of any formal charges against Appellant, the decision to transfer Appellant was merely an administrative decision that does not require any review or second-guessing about the reasons for the transfer. We conclude that the reasoning set forth in Wright, supra, is applicable to this case.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board was not required to grant Appellant a hearing under the provisions of O.C.G.A. § 20-2-940 and it could transfer Appellant to another assistant principal position within the school system. The decision of the Local Board, therefore, is

SUSTAINED.

This 12th day of November, 1992.

Mr. Lathem and Mr. Williams were not present.

James H. Blanchard
Vice Chairman for Appeals