

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>HENRY ADAMS,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 1999-60</b>
	:	
<b>COBB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Henry Adams (Appellant) from a decision by the Cobb County Board of Education (Local Board) to suspend him without pay for 20 days and to transfer him out of his position as an administrative assistant in a high school. The Local Board's action came after a tribunal found Appellant guilty of sexual harassment. The tribunal recommended a ten day suspension, but the Local Board increased the time to 20 days without giving any reason. Appellant claims there was no evidence that he violated the Local Board's sexual harassment policy and that the Local Board's decision to transfer him was improper. Appellant also claims that the increased suspension time was improper, that the Local Board's decision was retaliatory, and that the hearing was improperly conducted. The Local Board's decision is sustained.

The 1998-1999 school year was Appellant's third year as a high school administrative assistant. During the 1995-1996 school year, he was selected as a teacher-of-the-year in the middle school where he taught and the administrative assistant position was a promotion.

On May 21, 1999, a female paraprofessional filed a complaint alleging that Appellant sexually harassed her during the 1997-1998 school year. The complainant claimed that Appellant engaged her in a conversation in his office where he asked her what she thought about the actions of the President of the United States, William Clinton, with a White House intern, Monica Lewinsky, and then asked her if she had ever dated a black man. The complainant claimed that the questions made her so uncomfortable that she started crying after leaving Appellant's office. She claimed that Appellant frequently commented that she had a good figure and his comments made her feel uncomfortable. She alleged that Appellant also asked her to go to supper with him and, when she replied that she and her husband could meet Appellant and his wife, Appellant responded that he had something else on his mind. The teacher claimed that Appellant's actions violated the Local Board's sexual harassment policy.

The Local Board's sexual harassment policy, Policy GAB, defines sexual harassment as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature ... [that] unreasonably interferes with an employee's performance or creates an intimidating, hostile or offensive working environment, [or] submission to such conduct is made

a term or condition of an individual's employment, or submission to or rejection of such conduct by an employee is used as a basis for employment decisions affecting the individual." The policy requires the school system to conduct an immediate investigation of any charges and provides for disciplinary action if the charges are deemed true.

After receiving the complaint, the Cobb County School System conducted an investigation. During the investigation, other female teachers came forward and claimed that Appellant sexually harassed them by asking them to supper or by making comments that they found offensive. On June 11, 1999, the School System told Appellant about the charges and questioned him about the allegations made by the female employees. Appellant denied that any of the conversations occurred or that he made the comments. Nevertheless, when the investigation was over, the Local Superintendent charged Appellant with violating Policy GAB and the Code of Ethics by his actions and proposed to suspend him for 10 days without pay with a transfer to another school.

Upon receipt of the charges, Appellant asked for a hearing. A hearing was held on August 16 and 18, 1999 before a tribunal panel. The tribunal found Appellant guilty of the charges of sexual harassment and recommended a ten-day suspension without pay and a transfer to another school. The Local Board accepted the tribunal's finding of guilt, but increased the suspension period from the recommended 10 days to 20 days. Appellant then filed an appeal with the State Board of Education.

The primary issues raised by Appellant on appeal are 1) whether any evidence exists to show that Appellant violated the Local Board's sexual harassment policy, 2) whether the Local Board improperly increased the number of days of suspension, and 3) whether the Local Board properly transferred Appellant out of his position as an administrative assistant. Appellant claims that his transfer was punitive in nature, which makes it improper under *Wilner v. Fulton Cnty. Bd. of Educ.*, Case No. 1991-6 (Ga. SBE, Apr. 4, 1991), that the Local Board could not increase the length of the suspension period without filing findings of fact, and even if the teacher's version of the facts is accepted, his actions did not constitute sexual harassment under the Local Board's policy.

"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)."  
*Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

The Local Board's sexual harassment policy proscribes sexual conduct or speech in four situations: 1) if it unreasonably interferes with an employee's performance; 2) if it creates an intimidating, hostile, or offensive working environment; 3) if submission to such conduct is made a term or condition of employment, or 4) submission or rejection of such conduct is used as a basis for employment decisions. The primary evidence presented to the tribunal was that Appellant's conduct created an intimidating, hostile, or offensive working environment.

The tribunal heard evidence that Appellant asked a female teacher what she thought of President Bill Clinton's actions in his dealings with Monica Lewinsky. The conversation occurred in Appellant's office. The teacher also claimed that Appellant asked her if she had ever been involved with a black man. The teacher became so upset that she began crying after she left Appellant's office. At a later date, Appellant asked her to go to dinner and when she suggested that they go with their respective spouses, Appellant responded that that was not what he had in mind and that his wife did her thing while he did his. She also complained that he made comments about her figure. The teacher testified that she felt afraid and attempted to avoid any contact with Appellant, even though Appellant never asked her for any type of sex, did not touch her, and he did not have supervisory authority over her. The teacher did not report the matter to a supervisor, but she did talk with another teacher who she ran into when she left Appellant's office. The other teacher corroborated that the teacher was crying and distraught when she left Appellant's office. From this evidence, the tribunal could find that Appellant, because he was an administrator, created an atmosphere that was intimidating and offensive for this teacher and thus violated the Local Board's sexual harassment policy.

The Local Board failed to include in the record any findings made by the tribunal, and it did not state any independent reasons for increasing the suspension period from 10 to 20 days. Appellant claims that the Local Board's decision to increase the number of days of suspension without stating any reason is improper under State Board of Education decisions. None of the decisions cited by Appellant, however, establishes any error on the part of the Local Board. Under O.C.G.A. § 20-2-940, the tribunal does not make a final decision. Instead, it merely makes a recommendation to the local board, and the local board can take any action permitted by law. In student disciplinary cases, a tribunal has the authority to reach a final decision and the requirement that the local board must state a reason or any increased punishment exists to prevent arbitrary punishment increases merely because a student appeals the decision of the tribunal. There is no appeal involved in a teacher suspension case and the same constraints found in student discipline cases are unnecessary. The State Board of Education, therefore, concludes that the Local Board had the authority to increase the suspension period to 20 days from the recommended 10 days.

Appellant also claims that the Local Board transferred him as a punitive measure. The Local Board, however, claims that Appellant was transferred because of the feeling that he could not longer be effective as an administrator at the high school he was assigned to after so many teachers testified against him. Appellant cites *Wilner v. Fulton County Bd. of Educ.*, Case No. 1991-6 (Ga. SBE, Apr. 4, 1991), *aff'd Fulton Cnty. Bd. of Educ. v. Wilner*, Civil Action No. D-90210 (Fulton Sup. Ct., Jul. 2, 1991) for the proposition that a local board of education cannot transfer a teacher as a punitive measure. Appellant claims that the transfer was punitive because the Local Superintendent included the transfer in the initial charge letter and he was removed from his administrative assistant position before the hearing before the tribunal but there was no other position available for him.

The Local Board did not present any evidence that Appellant had lost his effectiveness, but this is immaterial because the burden is on the teacher to establish that a transfer is punitive since local boards of education have the statutory right to make transfers. O.C.G.A. § 20-2-943(b). In the instant case, Appellant has not established that his transfer was for punitive

reasons. Despite Appellant's claims, the fact that the Local Board had not placed Appellant into a new position by the time of the hearing before the tribunal does not establish the transfer as punitive. There was testimony that the attempts to place Appellant were unsuccessful because of vacations, Appellant's reluctance to interview or accept a position before a hearing, and the lack of other positions after one position was filled. The State Board of Education concludes that Appellant's transfer was not punitive.

Appellant also claims that the decision to bring charges of sexual harassment against him was in retaliation for his charges that the Local Board was discriminating in how it promoted minorities. The record, however, does not support Appellant's claim. Appellant made his charges in a letter dated June 7, 1999, but the sexual harassment charge was made by the teacher on May 21, 1999, 17 days before Appellant wrote his letter. There was no evidence that the investigation was changed as a result of Appellant's letter, or that the Local Board's decision was influenced by Appellant's letter. The State Board of Education, therefore, concludes that there was no evidence that the charges of sexual harassment were retaliatory.

Based upon the foregoing, it is the opinion of the State Board of Education that there was some evidence that Appellant violated the Local Board's policy regarding sexual harassment, that the Local Board's decision to increase the number of days of suspension was within its authority, that Appellant's transfer was not punitive, and that the charges against Appellant were not retaliatory. The Local Board's decision, therefore, is  
SUSTAINED.

This \_\_\_\_\_ day of January 2000.

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Bruce Jackson  
Vice Chairman for Appeals