

A hearing was held before the Local Board on August 6, 1991. The sole issue before the Board was whether the Local Board's decision to transfer Appellant was in violation of state law. The Local Board found that there was no evidence to support Appellants charges that the decision to transfer him was retaliatory. The Local Board confirmed the transfer and Appellant then filed a timely appeal to the State Board of Education.

PART III

DISCUSSION

Appellant claims on appeal that the Local Board's decision to transfer him was punitive, arbitrary and capricious and thus in violation of Georgia law. Appellant also maintains that the Local Board failed to substantiate its decision and failed to provide him with certain procedural safeguards before making the transfer.

Appellant cites *Wilner v. Fulton County Board of Educ.*, Case no. 1991-6 (Ga. SBE, 4/11/91) to support his argument that the Local Board's decision was illegal because it was punitive, arbitrary and capricious. In *Wilner*, we held that a local board may not use reassignment as a method of punishment, retaliation or as a disciplinary measure. However, *Wilner* also states that Appellant has the burden of proving that the transfer was a form of punishment. Appellant has failed to meet this burden.

The only evidence in the record that the Local Board's decision to transfer Appellant was a retaliatory measure is Appellant's own conclusion about why he was transferred. Appellant did not provide any evidence to support this assertion. 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 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SEE, 9/8/76). The mere fact that Appellant was transferred after he filed his EEOC claim is insufficient to overcome the Local Board's decision finding that retaliation was not involved in the transfer.

Appellant claims that the Local Board improperly ruled against admission of testimony in support of his argument that the Local Board's decision was punitive and retaliatory. The testimony that Appellant offered concerned what the witness overheard at a meeting. The Local Board properly excluded the testimony as hearsay.

Appellant also argues that the Local Board did not follow its own procedure for making transfers and thus violated his rights of due process. Appellant claims that a policy contained in the Newton County teacher's handbook requires the personnel director and principal to discuss transfers with teachers and personnel involved.¹ In his case, Appellant claims that no one discussed his transfer with him before the Local Superintendent made the decision.

We do not view such a policy as giving teachers any due process rights. A policy of this

¹ The Local Board maintains that the policy was no longer in effect. The Local Superintendent testified that he was not aware of such a policy. Since the Local Board did not make any findings of fact, and it is unclear from the record whether the policy existed, we proceed with an examination of Appellant's claims.

nature is primarily a management policy designed to maintain morale. The policy does not add any special rights for a teacher; the discussion merely represents a courtesy to the teachers. O.C.G.A. § 20-2-943(b) specifically exempts transfers from those local board actions that require a hearing. 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 excepted 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. We, therefore, conclude that Appellant was not denied any due process rights because his supervisor did not discuss the transfer with him before the Local Superintendent made the decision.

Appellant also argues that the Local Board failed to establish a good cause to substantiate its decision to transfer him from the high school to the middle school. For the reasons set forth above, we hold that a local board of education does not have to show good cause before making a transfer. 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.

Appellant also claims that the Local Board denied him due process because it did not allow testimony about the non-renewal of his coaching position or testimony about whether he was demoted. As a result, Appellant claims that he was denied the effective assistance of counsel. Additionally, he claims that the loss of his coaching position and his subsequent transfer resulted in a demotion. Appellant, therefore, claims that he was denied due process because the Local Board limited his testimony about the loss of responsibility, prestige, and salary to show that he was demoted. He also claims that he was denied due process because the Local Board did not notify him that he had the right to a demotion hearing.

In *Edmondson v. Monroe Co. Bd. of Educ.*, Case No. 1990-31 (Ga. SEE, 2/14/91), we held that a teacher does not have an interest in a supplemental position or any rights under the Fair Dismissal Act to contest the loss of a supplemental position. As a result, the loss of a supplemental position does not result in a demotion, even if there is a loss of supplemental pay, the loss of the responsibility of the supplemental position, and a loss of the prestige of holding the supplemental position. Appellant's loss of his supplemental position was not an issue before the Local Board. Appellant has failed to show how any link with his transfer could elevate a non-contestable action to a contestable action. We, therefore, conclude that the Local Board did not deny Appellant any due process rights when it refused to accept testimony about Appellant's loss of his coaching position. Similarly, the Local Board was not required to notify Appellant that he had the right to have a hearing on a demotion because he was not demoted.

Lastly, Appellant claims that the Board erred by not granting his motion for a continuance of the hearing. As a result, Appellant claims that his attorney did not have ample time to prepare for the hearing. The decision to grant a continuance is within the Local Board's discretion. Furthermore, there is evidence to suggest that although Appellant was not formally notified of the hearing until eight days prior, he had more than an adequate amount of time in which to prepare for it. Appellant had known that a such a hearing would take place in July when the Board acknowledged his request for this hearing.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board's decision to transfer Appellant was not arbitrary, capricious or punitive and should be confirmed. The decision of the Local Board, therefore is

SUSTAINED

This 14th day of November, 1991.

Mr. Abrams, Mr. Brinson, Mr. Sears and Mrs. King were not present.

Larry A. Foster
Vice Chairman for Appeals