

STATE BOARD OF EDUCATION

STATE OF GEORGIA

NICOLE DENISE ANDERSON,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2003-37
	:	
DEKALB COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Nicole Denise Anderson (Appellant) from a decision by the DeKalb County Board of Education (Local Board) to uphold the Local Superintendent's decision to take away her coaching duties and transfer her to another school after the Local Board upheld her suspension because she threatened some students on campus when she thought they were tampering with her car. Appellant claims that the transfer is an unauthorized punitive measure. The Local Board's decision is upheld.

Appellant was the girls' track and field coach at Southwest DeKalb High School. On September 6, 2002, she went to the faculty parking lot and saw a group of students near her car, which had previously been tampered with, and she suspected the students were tampering with her car again. One student was kneeling beside the tire of her car. During the next few minutes, Appellant engaged in a heated discussion with the students, used profanity, and retrieved a baseball bat from the trunk of her car. Appellant remained in her teaching position until November 9, 2002, when she was transferred to the central office without any duties. On December 2, 2002, the Local Superintendent charged her with incompetency, insubordination, and other good and sufficient cause.

On January 8, 2003, a tribunal heard the charges and found that Appellant had acted unprofessionally and inappropriately in using profane language and brandishing a baseball bat in an effort to intimidate a student and was, therefore, guilty of incompetency and there was other good and sufficient cause to impose sanctions. The tribunal recommended a ten-day suspension with a return to her duties and attendance in an approved anger management program. When she appealed to the Local Board, the Local Board approved the tribunal's decision, but reduced the suspension period to six days.

When the Local Superintendent wrote to Appellant to inform her of the Local Board's decision, he informed her that he was going to transfer her to another high school. Appellant then filed an appeal with the State Board of Education to protest the transfer.

In *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*, Case No. D-90210 (Fulton Superior Ct., July 2, 1991), the State Board of Education held that it was an abuse of authority for a local board of education to transfer a teacher as a punitive measure because O.C.G.A. § 20-2-943 provides for only three forms of disciplinary action: suspension, demotion, or dismissal.

The Local Board first argues that the State Board of Education should overturn *Wilner*, *supra*, because it unduly restricts school systems in their operational control over their employees. The Local Board's argument, however, is equally applicable to the entirety of the Fair Dismissal Law, O.C.G.A. §§ 20-2-940 *et seq.*, *i.e.*, the granting of any rights whatsoever to a school employee places restrictions on the operational control of the employees. The legislature has made numerous amendments to the Fair Dismissal Law since *Wilner* was decided without any indication that the outcome was an incorrect interpretation of the legislature's desires. The State Board of Education, therefore, concludes that the holding in *Wilner* should not be reversed at this time.

In the instant case, the Local Board argues that the transfer action was done by the Local Superintendent to serve the legitimate needs of the school system, and that the action occurred after it had made its decision to uphold the tribunal's decision to suspend Appellant, thus clearly establishing that the transfer was not punitive. The Local Board argues that it was in the best interests of the school system since it could not leave a teacher in the same school where the teacher had threatened a student and had used profanity against a student. The record, however, does not support the Local Board's argument. Appellant remained in her teaching position for two months after the incident occurred without any adverse reactions by the students or other teachers. The tribunal found that Appellant was an effective teacher and coach and should be allowed to return to Southwest DeKalb High School, although it added "if in the discretion of the Superintendent he feels she can continue to serve effectively" There was no showing by the Local Superintendent that Appellant could not serve effectively.

The Local Board argues that the transfer was not an action it took with respect to the September 6, 2002 incident, because it approved only a six-day suspension. Instead, the Local Board argues that this was an action taken by the Local Superintendent after its decision was rendered. Under O.C.G.A. § 20-2-1160, the State Board of Education can only review decisions made by a local board of education; it cannot review decisions made by local superintendents that have not been upheld by a local board. *See, Boney v. County Bd. of Educ. of Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947); O.C.G.A. § 20-2-1160. Thus the question about Appellant's transfer is not properly before the State Board of Education because it was not an issue decided by the Local Board. Appellant is, therefore, in the position of having gone through a hearing and received a punishment decision from the Local Board, only to have the Local Superintendent impose additional punishment beyond that which was imposed by the Local Board without having any immediate recourse to the State Board of Education.

Appellant, however, is not without recourse. Although she cannot file a grievance against the Local Superintendent, she can present the issue to the Local Board and obtain a

Local Board decision regarding the Local Superintendent's action under the provisions of O.C.G.A. § 20-2-1160.¹ If the Local Board fails to make a decision, she can seek mandamus in superior court.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision to suspend Appellant for six days, but the State Board of Education does not have jurisdiction to consider or review the action taken by the Local Superintendent following the Local Board's decision. Accordingly, the Local Board's decision is sustained and Appellant's appeal of the Local Superintendent's action is dismissed.

This _____ day of June 2003.

Wanda T. Barrs
Chair, State Board of Education

¹ The Local Board's Policy GAE(2) prevents the filing of a grievance in connection with a transfer.