

JOHN F. MAYHORNE,

Appellant

v.

HARFORD COUNTY
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 00-17

OPINION

In this appeal, Appellant argues that the local board's affirmance of the superintendent's decision to transfer him from his position as principal of Edgewood High School to business education teacher at North Harford High School was arbitrary, unreasonable and illegal. The local board has filed a Motion to Dismiss or for Summary Affirmance maintaining that its decision should be upheld. Appellant has filed an opposition to the motion to which the local board has replied.

BACKGROUND

John Mayhorne is currently a business education teacher at North Harford High School in Harford County. He began his employment with the Harford County Board of Education approximately 28 years ago when he became a teacher at Bel Air High School in 1972. After five years, Appellant transferred to Fallston High School where he became a Department Chairperson. In 1979, Appellant became the assistant principal for Joppatown High School. He was then transferred in 1983 to be the assistant principal at Aberdeen High School, and thereafter to Fallston High School to be assistant principal. In 1992, Appellant was promoted to supervisor of business education at Fallston. He remained in that position until he accepted the position as principal of Edgewood High School in 1997. (Tr. 81).

By letter of May 26, 1998, Kathleen M. Eng, Assistant Superintendent for Human Relations for Harford County Public Schools, advised Appellant that because he was not eligible for the Administrator II endorsement on his teaching certificate, he was not certified to be a principal.¹ He was further advised that in order to continue serving as a principal, he would have

¹Administrator II is the certification required in order to be a principal. Individuals holding an Administrator II certificate are required to receive a qualifying score on the School Leaders Licensure Assessment Test. COMAR 13A.12.04.04D(2). By letter of April 6, 1998, MSDE had advised Harford County Public Schools that MSDE's records revealed that Mr. Mayhorne had not successfully completed the Assessment Center in 1991, and that Mr. Mayhorne was therefore not eligible for an Administrator II endorsement.

to become certified by taking and passing the School Leaders Licensure Assessment Test.

In June, 1998, Appellant wrote a letter to the State Superintendent of Schools attempting to seek a waiver of the School Leaders Licensure Assessment Test requirement. Lawrence E. Leak, Assistant State Superintendent for Certification and Accreditation, responding on Dr. Grasmick's behalf, advised Appellant that "[t]he principal's assessment, like the teacher's certification test, cannot be waived by the State Superintendent of Schools," therefore Appellant needed to present a qualifying score on the test to qualify for the Administrator II endorsement.² In addition, Dr. Leak raised concerns that the results of Appellant's final assessment report for the March 11 and 12, 1991 Assessment Center that had been submitted by Appellant to the Harford County Public School's Human Resource Department had been altered.³

During the course of the next school year, there were various communications with Appellant regarding his certification. In March 1999 and again in May 1999, the local superintendent encouraged Appellant to take the School Leaders Licensure Assessment Test being given in June 12, 1999. (Tr. 26-27). Appellant indicated that he would seek other remedies to his certification problem and took no steps to register for the test. By letter dated May 21, 1999, Dr. Eng advised Appellant that he was being reassigned for the 1999-2000 school year. That letter states as follows:

In May 1998, I sent a letter to you informing you that we had

²Appellant also contacted A. Skipp Sanders, Deputy State Superintendent for Administration, regarding this issue. (Tr. 118); *See* letter to Sanders from Appellant dated June 3, 1999. Dr. Leak responded to this communication as well. *See* letter to Appellant from Leak dated June 24, 1999.

³The letter stated in part:

We have the copy of your final assessment report for the March 11 and 12, 1991 Assessment Center. Page 13 of our report clearly states that you were rated as an average to below average candidate, directly under your name. However, the materials submitted from Harford County which you gave to Ms. Yvonne Blevins on February 2, 1998, the notice that you were rated an "average to below average" candidate was removed from page 13. This is of concern to us and something that we have no explanation for. We do, however, feel a need to inform Harford County (by copy of this letter) of this discrepancy.

Appellant has always maintained that he did not alter his assessment report. The certification dispute is proceeding separately pursuant to procedures set out in COMAR 13A.12.05 on Suspension and Revocation of Certificate.

received information from the Maryland State Department of Education that you did not successfully complete the Assessment Center in 1991 and that it would be necessary for you to take and pass the School Leaders Licensure Assessment to remain in your current position. We provided you with fall test dates and encouraged you to take the test. As you did not take it in the fall, it became vital that you register and take the test in June. The Educational Testing Service informed us that you have not registered for the test to be administered on June 12, 1999. Since the closing date for late registration was May 18, 1999, we can only assume that you will be unable to meet the requirements to receive the Administrator II endorsement on your certificate. Therefore, it is with regret that I must inform you that the Harford County Public School System will no longer be able to maintain your current assignment as Edgewood High School's principal. It will be necessary that you be reassigned for the 1999-2000 school year. As a principalship is no longer a viable option, you will be placed in a position commensurate with your certification, qualifications, and experiences. Once possible positions are identified, you will be notified of your new assignment.

Thereafter, Appellant was advised of his reassignment as a business education teacher at North Harford High School. *See* letter from Dr. Eng to Appellant dated June 9, 1999. The decision was reviewed by the local superintendent who upheld Appellant's assignment. *See* letter from Haas to Appellant dated July 13, 1999.

Appellant challenged the reassignment decision of the superintendent and on September 7, 1999, a full evidentiary hearing was held before the local board. At that hearing, Appellant was represented by legal counsel and testified on his own behalf. In a decision issued September 27, 1999, the local board affirmed the decision of the superintendent. This appeal followed.

ANALYSIS

It is very well established, based on State Board opinions and the Court of Special Appeals' affirmance of *Hurl v. Board of Education of Baltimore County*, 6 Op. MSBE 602, 605 (1993), *aff'd*. 107 Md. App. 286 (1995), that a transfer of a principal to a lateral position or to a position of lower rank is within the discretion of the local superintendent. *See, e.g., Joseph P. Heaney v. New Board of School Commissioners for Baltimore City*, MSBE Opinion No. 99-2 (January 26, 1999; lateral transfer); *Earl Hart v. Board of Education of St. Mary's County*, MSBE Opinion No. 97-30 (June 25, 1997; transfer from assistant principal to classroom teacher); *Chenowith v. Board of Education of Baltimore County*, MSBE Opinion No. 95-29 (1995; transfer from assistant principal to director of recruitment); *Cameron v. Board of Education of Baltimore County*, 6 Op. MSBE 814, 815 (1995; transfer from assistant principal to classroom

teacher). Specifically, the local superintendent is vested with broad statutory authority to assign professional personnel and transfer them as the needs of the schools require. Md. Code Ann., Educ. § 6-201 (b). Moreover, no tenure attaches to administrative positions. Rather, employees

in administrative positions acquire and maintain tenure in employment with the school system and not in any particular position. *Cameron*, 6 Op. MSBE at 815-816.

It is important to note that Appellant is only challenging his reassignment to the classroom. He is not challenging the decision to remove him from the position of principal. We believe this is tacit acknowledgment of the fact that Appellant does not hold certification as a principal. As such he is not eligible under Maryland law to serve as a principal. *See* Educ. § 6-101 that states:

Unless he is eligible to be issued a certificate by the State Superintendent, an individual may not be employed as a county superintendent, assistant superintendent, supervisor, principal, or teacher.

Procedural and Evidentiary Issues

Appellant maintains that the State Board should hear this appeal *de novo* because the local board did not provide a fair opportunity for an oral hearing based on alleged bias of certain board members and certain evidentiary rulings made by the local board. Specifically, Appellant claims that it was unfair for the local board to prohibit him from pursuing the issue of Appellant's alleged alteration of the 1991 Maryland Assessment Center Program Report. However, because the issue of the alleged alteration of Appellant's 1991 Maryland Assessment Center Report is being addressed through the procedures governing suspension or revocation of certificates under COMAR 13A.12.05, we believe the local board did not act arbitrarily or unreasonably in refusing to pursue that matter.

With respect to Appellant's other issues on the fairness of the hearing, the State Board has noted in prior opinions that an administrative hearing is not a court of law. The formal evidentiary rules and strict procedures required by a court are not mandated. *See Zengerle v. Board of County Comm'r for Frederick County*, 262 Md. 1, 21 (1971); *Hyson v. Montgomery County Council*, 242 Md. 55, 69 (1966). Nonetheless, a review of the transcript discloses that Appellant was afforded a full and fair evidentiary hearing during which he was represented by counsel. Both he and the superintendent testified and were subject to full cross-examination. Numerous documents submitted by the Appellant as well as the superintendent were admitted into evidence.

Appellant also argues that he should now be permitted to question the superintendent concerning any written documents expressing her policy to avoid career assistant principals, including current statistics in Harford County supporting this policy. The superintendent testified

at the hearing before the local board, and counsel for Appellant had the opportunity to examine the witness. At that time, Appellant's counsel elicited testimony regarding the superintendent's philosophy on assigning individuals as assistant principals. (Tr. 28-30). Although given the opportunity, counsel for Appellant did not continue to pursue that line of questioning, and did not request any written documentation which might support the superintendent's position. Therefore, we believe Appellant had a fair chance to pursue this

matter. In summary, we find that the local board conducted a proper and impartial hearing, and that no further hearing before the State Board is necessary.

Substantive Issues

As to the merits of the transfer decision, we find that the local board did not act arbitrarily, unreasonably or illegally in affirming the superintendent's action. Based upon our review of the record, we believe the superintendent had valid and legitimate reasons for the transfer decision. (Tr. 25-30). As early as June, 1998, Appellant was on notice that the State Department of Education did not find Appellant legally certified to be a principal. *See* 6/18/98 letter from Leak to Mayhorne.

Moreover, the Superintendent perceived a lack of interest on Appellant's part in doing what was necessary to remedy the certification issue. She encouraged him in March, 1999, and again in May, 1999, to take the School Leaders Licensure Assessment Test. (Tr. 26-27). On both occasions, Appellant indicated that he was unwilling to take the test. Appellant believed he could resolve the matter in some other fashion, despite the fact that Dr. Leak had previously advised him that the assessment test could not be waived and that Appellant needed a qualifying score to be eligible for an Administrator II endorsement. As of early June, 1999, Appellant had not registered to take the June 12, 1999 test. (Tr. 28). Based on Appellant's actions, it was reasonable for the superintendent to believe that Appellant was not interested in taking the steps necessary to achieving eligibility for certification as a principal.

Given what the superintendent reasonably perceived as Appellant's unwillingness to become certified as a principal, and given the superintendent's philosophy on grooming assistant principals to eventually become principals, she believed that some other type of position was appropriate. (Tr. 29-30). The superintendent indicated that because other individuals had already gone through the process of competing for available administrative and supervisory positions as mandated by the collective bargaining agreement between the local board and the Association of Principals, Supervisors and Administrators of Harford County, she was limited in the positions to which she could assign Appellant who had not gone through the same process. The end result was that she assigned Appellant to the position of business education teacher at North Harford for which he was qualified.

Additionally, Appellant claims that the local board erred in its interpretation of Dr. Eng's May 21, 1999 letter regarding the transfer. He believed that the letter was a representation that

he would not be returned to the classroom. However, the letter does not state that Appellant would be placed in an administrative or supervisory position. In fact, it gives no indication of the type of position Appellant would be placed in other than that he would be placed in a “position commensurate with his certification, qualifications and experiences.” This is what occurred when Appellant was transferred to the position of business education teacher at North Harford. Although Appellant had not been a classroom teacher for many years, this position was commensurate with his certification, qualifications and experience as Appellant is both certified and has experience as a business education teacher. (Tr. 156).

Appellant further claims that he had a definitive and binding agreement with Dr. Eng that he would be placed in an administrative or supervisory position. The local board, as trier of fact, made certain credibility decisions regarding the testimony. It was within the local board’s province to decide, in light of the entire record in this case, whether the portions of the transcript cited by Appellant constituted a generalized discussion between Appellant and Dr. Eng regarding possible positions which happened to be administrative or supervisory in nature, or whether they constituted evidence of a firm promise of a particular type of position. (Tr. 111). In view of the local board’s decision to uphold the transfer decision, the board did not find a firm promise of any particular position. From our review of the transcript, we do not find this to be an unreasonable interpretation.

Finally, the superintendent’s failure to consider alternative principal certification does not render her reassignment decision arbitrary, unreasonable or illegal. Although an Alternative Principal Certificate is available, there is nothing that specifically requires that alternative certification be considered. *See* COMAR 13A.12.04.05. Moreover, as previously stated, the job vacancy for the principal position at Edgewood High School specifically required eligibility for a Maryland Advanced professional Certificate endorsed as Administrator II. The notice did not indicate that Alternative Principal Certification would suffice, as is required by law if Alternative Principal Certification is accepted. *See* COMAR 13A.12.04.05C(1).

CONCLUSION

For these reasons, we affirm the decision of the Board of Education of Harford County.

Edward Andrews
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March 22, 2000