

MICHAEL PACZKOWSKI,

Appellant

v.

ANNE ARUNDEL COUNTY  
BOARD OF EDUCATION,

Appellee

BEFORE THE

MARYLAND

STATE BOARD

OF EDUCATION

Opinion No. 01-09

### OPINION

This is an appeal of the Anne Arundel County Board's affirmance of the superintendent's decision to reassign Appellant from his position as a teacher at Old Mill High School to a position in the student records central office. Appellant asserts that the local board's decision was arbitrary, unreasonable and contrary to sound educational policy; and that the transfer was punitive and an abuse of discretion. The local board has filed a Motion to Dismiss or for Summary Affirmance maintaining that the local superintendent has the authority to assign and transfer professional personnel as the needs of the system require, and her decision was not arbitrary, unreasonable, or illegal. Appellant has filed an opposition to the motion in which he for the first time asserts that his involuntary transfer to a non-teaching, non professional position was an adverse employment action for which cause must be established.

### BACKGROUND

The material facts of this case are not in dispute. Appellant is a certificated employee, beginning his employment in the Anne Arundel System in August 1989. He has a bachelors degree and a masters equivalent. (Board Exhibit 12, pp. 76-78). During the 1993-1994 school year, four separate allegations of child abuse were made against Appellant related to classroom incidents while he was a social studies and family life teacher at George Fox Middle School. Following an investigation the local department of social services (DSS) "ruled out" three allegations and initially determined one to be "unsubstantiated." (Board Exhibit 3). In August 1994, DSS revised the one unsubstantiated finding to "indicated."<sup>1</sup> (Board Exhibit 4).

Appellant appealed the "indicated" finding to the State Office of Administrative Hearings ("OAH") under the limited review procedure then available an oral argument was held on June 22, 1995. The administrative law judge (ALJ) issued a decision on the appeal on October 19, 1995, affirming the finding of the DSS. (Board Exhibit 5). Based on a review of the written record, the ALJ found that the behavior described by the students in the allegations against the Appellant was "astonishingly outrageous". She concluded that the "indicated" finding by DSS

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<sup>1</sup>COMAR 07.02.07.02B(16) defines indicated child abuse as a finding that there is credible evidence which has not been satisfactorily refuted that abuse, neglect, or sexual abuse did occur.

supported the regulatory definition of sexual exploitation; that as a matter of law there was credible evidence in the record of an incident involving child sexual abuse; and that the determination by the DSS was neither arbitrary nor capricious. (Board Exhibit 5, pp. 8-9). The ALJ ordered that the Appellant's name be entered in a central registry as an indicated abuser pursuant to Maryland Family Law Art. § 5-715(d)(2) (Supp. 1994). (Appellant's Exhibit 5, p. 9).

While the matter was pending before OAH, the local board conducted an investigation of the incident. On August 26, 1994, Superintendent Carol S. Parham notified Appellant, pursuant to Education Art. §§ 6-201(b)(2)(iv) and 6-202, that (1) he was suspended without pay for 90 days, effective August 29, 1994; (2) he would be reassigned upon his return and placed on a plan of action; (3) he could request a hearing before the Board of Education of Anne Arundel County within ten days of receipt of the notification; and (4) he could appeal a decision of the local board to the Maryland State Board of Education. (Board Exhibit 6). Appellant did not request a hearing or appeal the 90 day suspension decision.

After completing the 90 day suspension, Appellant was assigned to the Department of Human Resources in the central office in a non-teaching position. In the following semester, in April 1995, the Appellant was assigned to teach at Glen Burnie High School to complete the remainder of the school year for a teacher who had gone on leave. (Board Exhibit 12, p. 86). In June 1995, Appellant was informed that he would be assigned to Old Mill High School to teach social studies in the upcoming 1995-1996 school year. (Board Exhibit 12, pp. 86-7). Appellant taught at Old Mill High School for the 1995-1996, 1996-1997, 1997-1998 and 1998-1999 school years. The record indicates that Appellant was an effective instructor. (Board Exhibits 1 and 12, pp. 60, 64).

In June of 1998, Appellant became aware of his right to a contested case appeal of the 1994 "indicated" finding of child abuse through a conversation with the Supervisor of Investigations and Records Management for the local board.<sup>2</sup> (Board Exhibit 12, pp. 122-23). Although Appellant had time to appeal the "indicated" finding to the OAH, he decided not to exercise that right. (Board Exhibit 12, pp. 97-98).

On June 16, 1999, the local superintendent informed Appellant that he was assigned to the central office, effective the beginning of the 1999-2000 school year. (Board Exhibit 2). The local superintendent gave the following reason for Appellant's transfer:

The Office of Administrative Hearings has informed me that you have not filed for a contested case hearing concerning a child abuse

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<sup>2</sup>In *Montgomery County Department of Social Services v. L.D.*, 349 Md. 239, 707 A.2d 131 (1998), the court concluded that prior to the entry of names of individuals in a central registry of suspected child abusers, accused individuals must be provided a full contested case hearing and right to judicial review in accordance with Family Law Art. § 5-715. The court therefore found the limited review procedure in place at the time insufficient to satisfy due process.

case involving an incident at George Fox Middle School. Due to the seriousness of these allegations, and the subsequent determination by the Department of Social Services that you were “Indicated” for sexual child abuse, effective the beginning of the school year 1999-2000, you will be reassigned to the Central Office.

Appellant was advised that he would remain in the assignment until further notice or when any appeal initiated by him was modified by OAH. (Board Exhibit 2). Appellant has worked in the central office, assigned to the student records unit since August 23, 1999.

On July 15, 1999, Appellant, through the Teacher’s Association of Anne Arundel County, appealed his reassignment. Appellant alleged that the reassignment was an arbitrary and capricious action and was contrary to the Anne Arundel County Public Schools’ manual, *Employee Performance and Conduct*. He argued that he was allowed to return to his teaching position for the 1995 through 1999 school years; that there was no new information or evidence to indicate that he was any greater a threat or danger to students now than he was in any of the past years that he was teaching; and, if the administration believed that it was safe for him to return to the classroom in August 1995, then it must believe it is safe now four years later. (Board Exhibit 7).

On August 20, 1999, the local superintendent responded to the appeal:

I have reviewed the facts and circumstances outlined in your letter, including Mr. Paczkowski’s performance ratings and observations from Old Mill, and I have considered the arguments which you made in support of his position. I have also reviewed the circumstances surrounding the indicated allegation of child abuse against Mr. Paczkowski, and his documented employment history. Based on this review, I have determined Mr. Paczkowski’s transfer will remain in effect at this time.

As reasons, the superintendent stated that she is authorized under § 6-201(b) of the Education Article to determine whether to reassign teachers as the needs of the school system require. She stated that the transfer was not arbitrary or capricious:

However, my decision was based on more than his recent performance. It was also based on factual and procedural history of the child abuse ruling against Mr. Paczkowski and his entire employment history.

Specifically, in 1994 Mr. Paczkowski was suspended for 90 days without pay from his position at George Fox Middle School for

misconduct, which included allowing and encouraging vulgar and offensive student behavior, having physical contact (including hugging, kissing, and “front wedgies”) which was inappropriate and offensive to students, having inappropriate communications with students of a sexual nature, failing to provide a suitable learning environment. These actions resulted in an “indicated” ruling on allegations of child abuse. In January of 1995, he was reassigned to the Central Office. In August of 1995, he was assigned to Old Mill and taught there for the following four years.

The local superintendent continued:

In this case, given the teacher’s record of serious misconduct and a child abuse case, I believe his current assignment helps avoid, at least for now, the potential risk of further incidents, which would be unfortunate for both the system and Mr. Paczkowski. At the same time, he will now have an opportunity to utilize his skills and abilities to benefit the system as a whole.

The local superintendent maintained that Appellant’s individual interest in staying at Old Mill was clearly outweighed by her determination as to what is in the best interests of the school system as a whole. She also clarified that Appellant was not suspended or dismissed as a result of the changes in his assignment. It was merely a reassignment that did not negatively impact his salary and compensation. (Board Exhibit 8).

Appellant appealed the local superintendent’s decision to the local board. (Board Exhibit 9). The local board appointed a hearing examiner and a hearing was conducted on February 8, 2000. The hearing examiner’s findings of fact, conclusions of law and recommendations were issued on May 24, 2000. The hearing examiner concluded that the local superintendent exercised her power to reassign professional employees as the needs of the schools required.

She [local superintendent] expressed reasonable concerns about the appropriateness of the Appellant’s placement in a teaching position. The witnesses agreed that there was a need to reorganize the student records division. The Appellant was transferred to that department. The Appellant has not met his burden of proving that this was an abuse of her administrative discretion.

(Board Exhibit 13, p. 8).

On September 21, 2000, the local board unanimously adopted the findings of fact, conclusions of law and recommendations of the hearing examiner and affirmed the decision of the local superintendent. (Board Exhibit 14). This appeal to the State Board followed.

## ANALYSIS

### **Whether the Reassignment was Arbitrary, Unreasonable, or Illegal**

It is well established in Maryland that a local superintendent may transfer teachers “as the needs of the system require.” Educ. Art. § 6-201(b). While a teacher may not agree with the reasoning behind a local superintendent’s decision to reassign him or her, the disagreement alone does not make the decision arbitrary, unreasonable, or illegal. *See Hurl v. Bd. of Ed. of Howard County*, 6 Op. MSBE 602, 605 (1993), *aff’d*, 107 Md. App. 286 (1995). Appellant argues, however, that the fact that he was removed from a teaching position and reassigned to the central office for reasons for which he had been disciplined four years earlier, and after he was reinstated as a classroom teacher for four school years with a clean record, is arbitrary and unreasonable.

The local board responds: “Transferring an individual out of the classroom to a comparable professional position in order to guarantee the safety of students is the essence of sound educational policy, when that action is taken in response to a notification that the employee had decided not to challenge the inclusion of his name on a central registry of suspected child abusers.” (Motion for Summary Affirmance, p. 9). While the local board’s argument is compelling, we find it difficult to justify this rationale for reassigning Appellant to a non-teaching position in June 1999, based on facts that were already considered and resulted in discipline in 1994. It is all the more difficult since Appellant was permitted to remain in the classroom for four additional school years after the “indicated” finding was affirmed by an ALJ and his name placed in the child abuse registry in October 1995.

Furthermore, Appellant and the school board became aware in June 1998, that Appellant had the opportunity to request an evidentiary hearing prior to having his name remain on the central registry. Appellant testified that the right to appeal expired in July 1998, before the beginning of the 1998-1999 school year. Nonetheless, the superintendent and local board did not reassign Appellant at that time or anytime during the school year. It was not until another full school year had passed before Appellant was reassigned to the central office. There is no evidence that Appellant concealed the fact that he did not request a hearing. Thus, even if we were to accept the local superintendent’s justification, the delay from when the right to request a hearing expired to the reassignment appears unrelated to concerns for student safety.

Although the county board’s hearing officer found that the evaluations and observations introduced at the county board hearing shed light on the local superintendent’s concerns, our review of the same evidence leads us to a different conclusion. (*See*, Board Exhibit 13, p. 8). The evidence in the record demonstrates that Appellant was an effective and capable teacher and there is no indication that student safety is now a concern. Board Exhibit 1 includes seven

evaluations and observations of Appellant in 1996, 1997, and 1998, that were introduced into evidence at the county board hearing. The evaluations and observations are uniformly positive and do not indicate any concerns about student safety. For example, a comment from May 14, 1998, was, "The teacher very effectively manages his classroom while exerting very little energy- the mark of a very good teacher." Another comment from March 6, 1998, stated, "You are commended for presenting your students with critical thinking opportunities that allowed them to develop conceptual frameworks." Comments referred to by the hearing officer that she viewed as "teaching sensitive subjects such as child abuse and neglect," are similarly positive and do not shed light on the local superintendent's concerns:

You appeared to be very positive with the students. Although they may not have had the whole answer correct you encouraged them and gave them credit for answers being partially correct.

The students seemed to be comfortable in expressing their opinions about the topics discussed. It was interesting how they handled the topic of spanking children and how it related to child abuse.

(Board Exhibit 1, p 14).

Moreover, witnesses at the county board hearing testified that Appellant was a competent and popular teacher. Stanley Stawas, former principal of Old Mill High School, testified that Appellant, "performed well in the classroom, demonstrated the ability to work with students and parents alike. There were no problems to my knowledge of anything as far as Mr. Paczkowski is concerned." (Board Exhibit 12, p. 60). Janet Ann Weller, former social studies department chair at Old Mill High School testified similarly about Appellant. "He has a special talent, I feel, for working with the average student. And he was very effective with those students." (Board Exhibit 12, p. 64). Finally, Nadine Omega-Dow, the current social studies department chair at Old Mill High School testified, "All the kids just thought very highly of him. They signed up for his classes. They wanted him specifically to be their - - to be their teacher." (Board Exhibit 12, p. 72). The record is simply devoid of any evidence of concerns about Appellant, other than those for which he was disciplined, then reinstated as a classroom teacher.

Whether we agree that it was appropriate or wise for Appellant to be allowed to teach students after four allegations of child abuse, of which one was deemed "indicated," is not before the State Board. Unquestionably the local superintendent and board would have acted within their discretion to reassign Appellant to the central office after the incident in the 1993-1994 school year for the safety of students. In our opinion, the fact that he did not appeal his placement on the central registry four years after his name was ordered on the registry is not a material additional fact to justify reassignment. The local superintendent exercised her discretion, based on facts known to her at the time, and returned Appellant to the classroom in April 1995, after he had served his 90 day suspension. She must have believed it was appropriate for him to return to the classroom and remain a classroom teacher for an additional four school years and

that he was not a safety concern for students during that time. Now, to reassign him to a non-teaching position, without any material additional or new facts that were unknown at the time she reinstated him to the classroom, appears to us as being arbitrary and unreasonable.

The State Board cannot assert strongly enough that it is first and foremost the duty of the local superintendent and board of education to protect the safety and well-being of its students. Yet, they also have a duty to act fairly in teacher transfers and not arbitrarily or unreasonably. For the reasons noted above, we find that this specific transfer is not reasonably supported by the justifications given. To be rational and genuinely related to the safety of children, the local superintendent would not have returned Appellant to the classroom after the 90 day suspension. It is not reasonable for the superintendent to have delayed the reassignment to a nonteaching position for more than four school years, if there were genuine concerns about the safety of students in Appellant's classes.

In summary, the local superintendent was aware of Appellant's previous misconduct as well as the fact that his name was placed on the central registry in October 1995. Nonetheless, after Appellant completed a 90 day suspension without pay for the misconduct, the superintendent allowed him to return and remain in a teaching position for four school years during which time Appellant's performance and conduct were above reproach. Under these circumstances we find it arbitrary and unreasonable for the superintendent to reassign Appellant to a nonteaching position because of concerns for student safety without any new facts to support that concern. *See Department of Health v. Walker*, 238 Md. 512, 523 (1965) (Decisions contrary to law or unsupported by substantial evidence are not within the exercise of sound administrative discretion, but are arbitrary acts.)

### **Just Cause for Reassignment or Transfer**

Appellant claims that his reassignment is not a transfer as contemplated by State law and State Board opinions, but rather is disciplinary in nature. Arguing in support of this claim, he notes that his central office position does not have a job title or job description, does not exist in the budget, and provides no opportunity for advancement. His duties, he declares, are "menial and demeaning" and a "serious setback" in his career. (Appellant's Memorandum in Opposition to County Board's Motion for Summary Affirmance, pp. 7-9). Consequently, he argues, the local superintendent was required to show sufficient cause for his reassignment.

Appellant's novel argument is not supported by Maryland law or the decisions he cited in his brief.<sup>3</sup> As previously noted, it is well established in State law that the local superintendent is

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<sup>3</sup>Appellant's reliance upon the following cases is misplaced. *Rodriguez v. Bd. of Educ. of Eastchester Union Free School District*, 620 F.2d 362 (2<sup>nd</sup> Cir. 1980) was based on a Title VII discrimination claim. *Galabya v. New York City Bd. of Educ.*, 202 F.3d 636 (2<sup>nd</sup> Cir. 2000), concerns an Age Discrimination in Employment Act (ADEA) claim. *Bunch v. Shalala*, 67 F.3d 293 (4<sup>th</sup> Cir. 1995), is an unpublished opinion concerning Title VII discrimination and ADEA

vested with broad statutory authority to assign professional personnel and reassign them as the needs of the schools require. Md. Code Ann. Educ. Art. § 6-201(b). There is no qualifier in the statute as to which position a professional employee may be reassigned. The only limit is that the transfer relates to the “needs of the schools.” Numerous State Board opinions and the Court of Special Appeals in *Hurl v. Board of Education of Howard County*, 6 Op. MSBE 602, 605 (1993), *aff’d*. 107 Md. App. 286 (1995), affirm that a transfer of a teacher 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); *Chenoweth v. Board of Education of Baltimore County*, 7 Op. MSBE 197 (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).

Moreover, discipline for which “cause” must be demonstrated, as defined in Ed. Art. § 6-202, relates to suspension and dismissal. “Cause” for suspension or dismissal is limited to five grounds: immorality, misconduct in office, insubordination, incompetency, or willful neglect of duty. Ed. Art. § 6-202(a)(1). Those elements are simply not present in Appellant’s reassignment.

Since Appellant’s transfer was not a disciplinary suspension or dismissal, the local superintendent was not required to demonstrate “cause” as defined in Ed. Art. § 6-202. *See Chenoweth v. Bd. of Educ. of Baltimore County*, 7 Op. MSBE at 198 (a local superintendent does not have to establish just cause for “transferring or reassigning a professional tenured employee to a lower level position.”)

## CONCLUSION

Under the specific and unique circumstances of this case -- Appellant’s listing on the child abuse registry in October 1995 as a result of an “indicated” finding of child abuse by the Department of Social Services in 1994; an investigation by the school system followed by Appellant’s serving a 90 day suspension without pay in 1994; a subsequent assignment of Appellant as a classroom teacher from April-June, 1995 at Glen Burnie High School followed by four years of effective performance as a social studies teacher at Old Mill High School including one full year after the deadline had expired for requesting an evidentiary hearing on the four year old “indicated” finding; and no complaints or allegations regarding Appellant since 1994 -- we find that the local board acted arbitrarily and unreasonably in affirming Appellant’s transfer in 1999 to a central office non-teaching position because of concerns for student safety. *See* COMAR 13A.01.01.03E(1)(b)(definition of arbitrary); *Hurl v. Bd. of Ed. of Howard County, supra*. We therefore reverse the decision of the Board of Education of Anne Arundel County and direct the Board to reinstate Appellant to the next vacant teaching position for which he is

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discrimination claims. Appellant does not allege that he suffered discrimination based on Title VII or the ADEA.



qualified.

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DISSENT

Given that Appellant's name is on a registry of individuals with an "indicated" finding of child abuse, we would affirm the local board's decision to reassign Appellant to a non-teaching central office position.

George W. Fisher, Sr.

Walter Sondheim, Jr.

February 27, 2001