



## THE COMMONWEALTH EDUCATIONAL POLICY INSTITUTE

CENTER FOR PUBLIC POLICY - L. DOUGLAS WILDER SCHOOL OF GOVERNMENT AND PUBLIC AFFAIRS

### CEPI Education Law Newsletter

Dr. Richard S. Vacca, Editor; Senior Fellow, CEPI

NOVEMBER 2013: Vol. 12-3

#### ADMINISTRATOR REASSIGNMENT: POLICY IMPLICATIONS

##### Overview

In the wake of shifting community demographics and budgetary constraints local school boards across the country are carefully collecting and mining student enrollment and testing data, identifying student achievement gaps where they exist, creating remediation plans to improve low performing schools, increasing graduation rates, and balancing school building staffing patterns. At the same time local school boards, administrators, and teachers are working to realign curriculum and instruction in an effort to meet the mandates of federal and state laws—laws designed to meet the needs (educationally, culturally, and socially) of a diverse population of students many of whom come from families where English is not the primary language.

One area of school system management experiencing the dynamics of major change is personnel. In today's public school systems the selection, hiring, assignment and reassignment of effective administrative staff and classroom teachers is a high priority as local school boards strive to achieve equity and provide students in every school building with equal access to a quality education. However, while the achievement of this goal is a top priority, it nevertheless has become a source of potential litigation especially in states where tenure statutes and/or collective bargaining agreements exist.

*Board Authority.* As a general rule, and under state law, the authority to hire, assign, reassign, and dismiss personnel vests in the local board of education. Courts have consistently held that final personnel decisions are the board's to make in the exercise of *discretionary authority* (i.e., within the board's *good faith judgment* to make) so long as the board does not act unconstitutionally, or illegally, or beyond the scope of its legal authority, or in violation of its own policies, or in an arbitrary or capricious manner. (Vacca and Bosher, 2012) However, the reassignment of personnel to different positions still can be litigious. When is a reassignment simply a routine, lateral, co-equal transfer? When is it a promotion? Is there such a thing as a demotion? Can a school board reassign a school principal to a teaching position? Does the law of a given state classify a school principal as a "teacher" under the law? If so, does that principal retain his/her

tenure status in both positions? These questions can be answered by applying appropriate state statutes and case law, collective bargaining agreements where they exist, and local school board policies and practices.

*Assignment and Reassignment.* As a matter of contract law and absent a statute or collective bargaining provision to the contrary, school system employees work for the local school board and are subject to assignment and reassignment to any school, position, or task for which they are qualified. It is important to note that while tenure, where it exists, may differ from state to state it generally is procedural in nature and accrues to specific positions in a school system (e.g., principal, teacher). It does not cover specific jobs or tasks to be carried out. (Vacca and Boshier, 2012) In today's public school systems, of all the managerial decisions made by school boards, the assignment and/or reassignment of key administrative staff, especially school principals as "instructional leaders" is of critical importance.

*Transfer and Demotion.* Simply stated a *transfer* is moving an employee from one position and/or location to another. In Chapter Seven of the revised eighth edition of our textbook, my colleague Professor Boshier and I treat several court decisions from a host of jurisdictions where the issue grew from allegations of *demotion* in a school board's decision to reassign (*i.e.*, transfer) a staff member to another position in the school system. In that discussion we offer the following definition of *demotion* articulated by the Fifth Circuit in Singleton v. Jackson Municipal Separate School District (5<sup>th</sup> Cir. 1969): "Demotion...includes any reassignment: (1) under which the staff member receives less pay or less responsibility than under the assignment he held previously, (2) which requires a lesser degree of skill than did the assignment he previously held, or (3) under which the staff member was asked to teach a subject and grade other than the one for which he is certified or for which he has had substantial experience within a reasonably current period." In addition, and from other court decisions, we offer criteria that focus on "rank and grade," "voluntary and involuntary nature of transfers," application of "non-discriminatory criteria," and "required tasks and number of hours of work (*i.e.*, work load)." (Vacca and Boshier, 2012)

### **Murphy v. St. Paul Public Schools, I.S.D. School District No. 625 (Minn. App 2011)**

Recently I reviewed a decision from the Court of Appeals of Minnesota involving the reassignment of a school principal to an assistant principal position at another school. Because the new position represented a change in rank she alleged that she had been demoted within the meaning of state law.

*Facts.* Hired as a teacher on special assignment by the school district in September 2002, Murphy was promoted to assistant principal in August 2004, and later to principal of Arlington Senior High School for the 2005-2006 through 2009-2010 school years. Facing a budget deficit for the 2011 fiscal year, the school district closed Arlington Senior High School. Murphy was reassigned to an assistant principal position at another senior high school. In addition the district reassigned other principals, closed two elementary schools, and either merged or co-located eight other schools.

Murphy informed school officials that she would not accept the assistant principal position. She said that she would accept a position as principal on special assignment or as a co-principal. The superintendent of schools sent Murphy a letter stating that she would not be placed as a principal

and that she could only use the titles “administrator” or “assistant principal” because any other title would only lead to “ambiguity.” A subsequent letter from the superintendent described Murphy’s new duties and directed her to report to the new position to begin in her “assigned position of Assistant Principal.” The letter also stated that she would retain her rank and compensation as a principal.

Murphy went into court seeking review of the school district’s decision to assign her to an assistant principal position from her position as a principal. More specifically she argued that the new assignment was a demotion and as such the school district was in violation of the Minnesota Teacher Tenure Act by failing to give her notice and a hearing before she was demoted. And, that her seniority and principal tenure status entitled her to a principal position in the district. The school district argued that her reassignment was not a demotion because there was no reduction in salary or in compensation, and that she retained her seniority and rank as a principal.

*Court Opinion and Decision.* The issue before the court asked: Did the school district demote Murphy by assigning her to an assistant principal position from a principal position? Citing Minnesota law the Court began its opinion by stating that a school district’s determination will be reversed only “when it is fraudulent, arbitrary, unreasonable, unsupported by substantial evidence, not within its jurisdiction, or based on an error of law.” If the court determines that the district has acted on an “erroneous theory of law” the case should be remanded with directions “to proceed under a correct theory” and “not attempt to decide the case on the merits.” In this case, said the Court, the issue of whether Murphy was demoted under the Minnesota Teacher Tenure statute (*Minn. Stat.* 122A.41 [2010]) is a matter of law reviewed de novo.

The appellate court makes it clear that under the Minnesota tenure statute teachers in first class cities (cities with more than 100,000 residents, Saint Paul being one) who achieve tenure status “are entitled to notice and a hearing before discharge or demotion.” What is more, said the Court, “a principal is considered a ‘teacher’ under the act.” Therefore, “[t]he act’s notice and hearing requirements...are applicable to Murphy because she was a tenured principal working at a public school in St Paul when the District assigned her to an assistant principal position.” Thus, the fundamental question before the Court requires the application of the tenure statute’s definition of the term “demote” which states “to reduce in rank or to transfer to a lower branch of service or to a position carrying a lower salary or compensation.” The Court expressed agreement with Murphy’s view that the definition is “disjunctive” and therefore “only one of the three enumerated actions needs to be demonstrated.”

In Murphy’s view her assignment to assistant principal was a reduction in rank or a transfer to a lower branch of service because she would be subordinate to the school principal and she has fewer responsibilities. And, despite while maintaining a principal rate of pay, the position of assistant principal itself is paid on a lower salary schedule thus her transfer actually was to a lower paying position. The Court found both arguments persuasive.

Citing Minnesota case law on point the Court sets out to compare the old and new positions and asks whether the new position is *promotional* (defined as a position occupying “a higher place, rank, or standing”) in nature. Relying on the Minnesota Supreme Court’s analysis in State ex rel. Haak v. Board of Education of I.S.D. 625, St. Paul (Minn. 1985) the two positions had to be placed

in the overall organizational structure, the functions and responsibilities of the positions had to be identified, and the qualifications needed to carry out the responsibilities of each position had to be examined. In the Court's view these aspects provide "the appropriate framework" within which to analyze Murphy's transfer to assistant principal. Was it "a reduction in rank or a transfer to a lower branch of service?"

The school district urged the Court to apply the Haak (Minn. 1985) criteria to support the conclusion that Murphy was not *demoted*. In the view of school officials her duties and responsibilities as an assistant principal "are more closely aligned with those of a principal than with those of an assistant principal...." In her new position, as described in the superintendent's letter, and in addition to the duties set forth in the generic description for assistant principals Murphy was assigned nine other duties. The general duties of an assistant principal include assisting the principal in creating an inclusive learning environment, evaluating staff, selecting prospective staff, and budgeting. An assistant principal also reports to the school principal, is responsible for daily school operations, supervises the bus safety program, and shares responsibilities with the principal in the areas of curriculum, assessment and instruction. The additional duties assigned to Murphy required her to provide "instructional leadership and guidance" in the implementation of, among other things, staff supervision and evaluation, curriculum management, program evaluation and assessment, and strategic priorities and goals.

The Court did not agree with this view. The Court reached its conclusion by focusing on the greater degree of *discretion* and *authority* Murphy had as a principal. In addition, said the Court, "the qualifications required to be eligible for an assistant principal position are less than those required for a principal position." Regarding the fact that her salary as well as her official rank and status remained at the principal level, the Court reasoned that the actual position to which she was officially assigned carried a lower salary or compensation and these accrue to position not to an individual. Thus, based upon its analysis of the facts presented, and its reading of the statute, the Court concluded that Murphy had suffered "a reduction in rank or a transfer to a lower branch of service, which constitutes a demotion under *Minn. Stat. 122A.41, subd. 19[c]* (2010).

The Court then discussed its role in school personnel decision making as presented in this case...especially Murphy's request that the board of education be ordered to assign her to a principal position in the school district. In the opinion of the Court, it would be "inappropriate to direct the board of education to assign Murphy a principal...." The rights and authority of school boards "to determine policy in the administration of school affairs..." must not be impaired.

In its reactions to public policy considerations presented by the school district and in amicus curiae, the Court agreed with the importance of applying the law in a way that "protects teachers from arbitrary demotions and discharges without impairing the rights of school boards to administer the school system without transferring to teachers and courts the management, supervision and control of school systems..." and the "great need for public schools to retain the inherent managerial authority to determine the assignment of their employees for purposes of efficiently operation the educational services provided." However, said the Court, there are boundaries. To that end, the state statute "entitled Murphy to notice and a hearing before demotion."

In a final comment the Court opined that arguments made by the district and amicus curiae are “more appropriately directed to the legislature....”

*Decision.* Because the resolution of Murphy’s remaining claims involved potential fact issues and was more appropriately determined by the board of education, the Court reversed the school district’s determination that Murphy was not demoted and remanded the case back to the Saint Paul board of education to proceed under a correct theory of law and not inconsistent with this opinion or the Minnesota Teacher Tenure Act.

## **Policy Implications**

At a time when the assignment and reassignment of public school administrators, especially effective building principals (*i.e.*, instructional leaders) is a high priority in public school systems across this country, the decision and rationale in the Murphy case offer a reminder of potential policy implications. While the Court of Appeals of Minnesota reiterates the traditional judicial attitude of noninterference (*i.e.*, that local school boards and not judges decide matters of school system management, especially personnel), it nonetheless restates several guiding principles applicable to policy formulation and implementation.

Local school system policies must make it clear that:

- The Board of Education (the Board) is vested with final authority to make all personnel decisions including but not limited to assignment and/or reassignment to positions in the school system organizational structure.
- All personnel decisions are made in accordance with applicable federal and state statutory law and for the purpose of providing all students with equal access to quality educational opportunities.
- All official job descriptions (including qualifications, duties and responsibilities, salary and other compensation) are applicable to all assignments and reassignments of personnel.
- Absent a state statute or collective bargaining agreement to the contrary, the Board reserves the right to assign and/or reassign all personnel to (a) any position in the school system for which they are qualified, and/or (b) duties and responsibilities for which they are qualified.
- All assignments and reassignments of administrative staff members are implemented in accordance with school system policies and procedures and in a timely manner—including timely notification of all individuals involved in the assignment or reassignment.

## **Resources Cited**

Minn. Stat. 122A.41, subd.19[c] (2010)

Murphy v. St. Paul Public School Schools, ISD No. 625, 795 N.W.2d 30 (Minn. App. 2011), *appeal dismissed*, at 2011 Minn.LEXIS 532 (Minn. 2011)

Singleton v. Jackson Municipal Separate School District, 419 F.2d 1211 (5<sup>th</sup> Cir. 1969), *rev'd and remanded*, 396 U.S. 290 (1970)

State ex rel. Haak v. Board of Education of ISD 625, St. Paul, 367 N.W.2d 461 (Minn. 1985)

Vacca, Richard S. and Bosher, William C, Jr., LAW AND EDUCATION: CONTEMPORARY ISSUES AND COURT DECISIONS, Eighth Edition (LexisNexis 2012)

*Richard S. Vacca*  
Senior Fellow CEPI

**Note:** The views expressed in this commentary are those of the author.