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Date: September 15, 2016 at 11:36:31 AM EDT
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Cc: Board Members <BoardMembers@mcintosh.k12.ga.us<<mailto:BoardMembers@mcintosh.k12.ga.us>>>
Subject: Re: Transfer Ramifications

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I would like to address several legal issues with regard to the Boards decision to transfer Mr Lollis. For purposes of consistency, I will use the terms Board, Superintendent, and Principal in this email. (Some Board opinions and case law I will discuss involved teachers, principals and other personnel, but our situation is obviously the principal)

ISSUE #1

Can the principal seek action in court directly with regard to this action?

I am very confident that the principal CANNOT seek direct court action. The Georgia Supreme Court has decided, on more than one occasion, that the process described in OCGA 20-2-1160 provides an adequate legal remedy for questions of school law and that this process MUST be followed.

ISSUE #2

Can the Board transfer an employee without the recommendation of the Superintendent?

I am VERY confident that the Board can transfer an employee without the recommendation of the Superintendent. There is a State Board opinion that directly states that 20-2-211 applies only to hiring. In that opinion, the Board determined that the 20-2-943(a) provisions could be exercised without the recommendation of the superintendent. Also In that opinion, the State Board went to great lengths to express the constitutional and statutory authorities of local boards. It held that there was no express language that required the superintendent's recommendation. It is my opinion that if the local board can exercise the drastic, due process invoking measures in 20-2-943(a) without a recommendation from the superintendent, the it can certainly exercise the lesser, non due process invoking measures in 20-2-943(b).

ISSUE #3

Can the Board transfer under these circumstances without a 940 hearing?

This is the most troubling of the issues from the perspective of the local board. In the early 1990s there were two opinions that held that a transfer that was made as a form of punishment HAD to invoke the principal's 940 rights. It held that transfers could only be made if they were in the administrative interest of the local district, and could NOT be made as a form of punishment without having a hearing under 20-2-940.

In the 2000s the State Board began to whittle away at these opinions, with the main chop being the decision that the principal has the burden of proof to show that the transfer was punitive, and not for some other reason. Local Boards began to confront this, only partially successfully, by arguing that the transfer was "in the best interest of the district" for a variety of reasons other than to punish the principal.

It is my opinion that this issue presents the biggest problem for the Board. Again, I remind everyone that this communication is attorney-client privilege and should not be disclosed. I really wish I had had more time to thoroughly research this issue before it was voted on Monday. I do not know if the principal has taken any action to this point, but if an 1160 hearing is requested, it may be in the best interest of the Board to reverse its decision Monday night and begin the 940 due process procedures and set up a hearing on the matter. To reiterate, it is this issue (can the transfer be made without 940 due process hearing) that is the most problematic for the local board.

I have not attached the opinions from the Georgia Supreme Court and the State Board, but can do so when I get to my laptop. I am at a local government seminar in Athens.

RB

Sent from my iPad