

IN THE SUPREME COURT OF THE STATE OF TENNESSEE

STEPHEN P. GELLER,)
)
 APPELLEE,)
)
 V.) No. W2017-01678-SC-R11-CV
)
 HENRY COUNTY BOARD) *Oral Argument Requested*
 OF EDUCATION,)
)
 APPELLANT.)

AMICUS CURIAE BRIEF OF THE TENNESSEE SCHOOL BOARDS
ASSOCIATION IN SUPPORT OF APPELLANT, HENRY COUNTY
BOARD OF EDUCATION

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ORAL AGRUMENT REQUESTED

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STATEMENT REGARDING CITATION OF THE RECORD ON APPEAL

The record in this appeal consists of five volumes of technical record, paginated serially 1-681. In this brief, the technical record will be referred to as TR followed by volume number and then page number. The record also contains four volumes of trial testimony labeled as appeal transcript, paginated serially 1-438. In this brief, the appeal transcript will be referred to as AT followed by volume number and then page number. Finally, the record contains one volume of trial exhibits. In this brief, the trial exhibits will be referred to as TE followed by the exhibit number of the exhibit referenced.

STATEMENT OF THE ISSUES

Whether the Court of Appeals was in error when it reversed the Trial Court's decision that the Defendant's transfer of the Plaintiff complied with Tenn. Code Ann. § 49-5-510.

STATEMENT OF THE CASE

Pursuant to the Rules of Appellate Procedure 31(b) and 27(b), the Tennessee School Boards Association (“TSBA”) refers this Court to the Statement of the Case appearing at page 7 of the Appellant’s brief to the Supreme Court.

STATEMENT OF FACTS

Pursuant to Rules of Appellate Procedure 31(b) and 27(b), TSBA refers this Court to the Statement of Facts appearing at page 8 of the Appellant's brief to the Supreme Court.

ARGUMENT

Pursuant to Rules of Appellate Procedure 31(b) and 27(b), TSBA refers this Court to the Standard of Review appearing at page 27 of the Appellant's brief to the Supreme Court. TSBA hereby adopts all arguments in the Appellant's brief. The primary purpose of filing this Amicus Curiae brief is to expand on the Appellant's arguments and emphasize to the Court the potentially negative impact the Court of Appeal's ruling may have on public school districts in Tennessee.

The ruling of the Court of Appeals should be reversed because the Director's decision to transfer Mr. Stephen P. Geller ("Geller") was reasonable under the circumstances and consistent with Tenn. Code Ann. § 49-5-510. The record does not contain any clear evidence that the transfer decision was not reasonable and fair under the circumstances. Further, the ruling is contrary to the long-standing public policy affording broad management discretion to the director of schools as evidenced by the presumption of good faith and statutory framework governing the duties of the director.

I. The Court of Appeals erred in its application of the "sufficient, demonstrable grounds" standard.

This Court is ultimately being asked to decide whether a director's decision to transfer an employee due to inadequate licensure was arbitrary and capricious when: (1) there is a presumption of good faith that the action was fair and reasonable; (2) there is no dispute that the Director's decision was based solely on his belief that an administrative license was required for the position; and (3) the threshold question for whether the license was required is dependent upon a term, i.e. "instructional leadership responsibilities", that is not defined in law and upon which reasonable minds could differ.

Tennessee courts have long held that the appropriate standard to determine whether a transfer has been made in compliance with Tenn. Code Ann. § 49-5-510 is whether the transfer was arbitrary, capricious, or based on an improper motive. *Lawrence Cty. Educ. Ass'n v. Lawrence Cty. Bd. Of Educ.*, 244 S.W.3d 302, 317 (Tenn. 2007); *McKenna v. Sumner Cty. Bd. of Ed.*, 574 S.W.2d 527, 528 (Tenn. 1978); *Metro. Nashville Educ. Ass'n v. Metro. Bd. of Pub. Educ.*, No. M2011-02242-COA-R3CV, 2013 WL 870656, at *2 (Tenn. Ct. App. Mar. 7, 2013); *Marion Cty. Bd. of Educ. v. Marion Cty. Educ. Ass'n*, 86 S.W.3d 202, 207 (Tenn. Ct. App. 2001); *Knox Cty. Educ. Ass'n v. Knox Cty. Bd. of Educ.*, 60 S.W.3d 65, 75 (Tenn. Ct. App. 2001); *Franklin Cty. Bd. of Educ. v. Crabtree*, 337 S.W.3d 808, 814 (Tenn. Ct. App. 2010). Courts will generally not interfere with a transfer decision so long as the transfer was not arbitrary and capricious or actuated by political or other improper motives and “presume that the actions of a board or superintendent are not arbitrary and capricious but are reasonable and fair unless there is clear evidence to the contrary.” *Marion County Bd. of Educ. v. Marion County Educ. Ass'n*, 86 S.W.3d 202, 208 (Tenn. Ct. App. 2001) (emphasis added).

Due to the broad authority vested in the director of schools by this statute, “[a] director's decision to transfer a teacher is afforded a presumption of good faith, and the party challenging the decision carries the burden to establish, by a preponderance of the evidence, that the decision was arbitrary, capricious, or ‘improperly motivated.’” *Franklin County Bd. v. Crabtree*, 337 S.W.3d 808, 814 (Tenn. Ct. App. 2010) (quoting *Lawrence County Educ. Ass'n v. Lawrence County Bd. of Educ.*, 244 S.W.3d 302, 315 (Tenn. 2007)). A decision is arbitrary and capricious if it is not based on any course of

reasoning or exercise of judgment or is one that disregards facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion. *City of Memphis v. Civil Serv. Comm'n of City of Memphis*, 238 S.W.3d 238, 243 (Tenn. Ct. App. 2007). The arbitrary and capricious standard in this context is well defined in Tennessee law.

The Court of Appeals held that the Director, Mr. Sam Miles (“Miles”), lacked “sufficient, demonstrable grounds” for transferring Geller solely on the basis of his lack of administrative licensure because he failed to adequately investigate Geller’s specific tasks and duties to determine whether he spent more than 50% of his time on instructional leadership. *Geller v. Henry Cty. Bd. of Educ.*, No. W201701678COAR3CV, 2018 WL 4944542, at *11 (Tenn. Ct. App. Oct. 12, 2018). In reaching this conclusion, the Court of Appeals utilized a three-part test for the transfer of a tenured teacher under Tenn. Code Ann. § 49-5-510: (1) the transfer must be made in good faith and not in an arbitrary and capricious manner; (2) the transfer must be made in order to further the efficient operation of the school system; and (3) the transfer “shall be acted upon in accordance with board policy.” *Id.* at *6. It did not make a finding that the transfer was improperly motivated, nor did it mention that aspect in its three-part test.

As Geller correctly points out in his brief,

“The trial court found that Miles “believed” the transfer of Geller was necessary to the efficient operation of the school system because Miles “believed” Geller was required to hold an administrator’s license. (TRVol V; 629) The Court of Appeals did not disturb this finding regarding the motive of the Director of Schools.” (Gellar Brief; 15) (emphasis added)

At no point does the Court of Appeals discuss an improper motivation because it is not at issue on appeal.

There are four Tennessee cases that have used the “sufficient, demonstrable grounds” standard in evaluating the appropriateness of an employee transfer. See *Springer v. Williamson Cty. Bd. of Educ.*, 906 S.W.2d 924, 926 (Tenn. Ct. App. 1995); *State ex rel. Hyde v. Bills*, No. 86-8-II, 1986 WL 6565 (Tenn. Ct. App. June 11, 1986); *Galyon v. Collins*, No. 03A01-9711-CH-00513, 1998 WL 331300 (Tenn. Ct. App. June 24, 1998); *Willis v. Franklin Cty. Bd. of Educ.*, No. 01A01-9606-CH-00266, 1998 WL 391760 (Tenn. Ct. App. July 15, 1998). Prior to the Court of Appeals’ ruling in the present case, every case that has used the “sufficient, demonstrable grounds” standard has done so in the context of improper motivation, specifically political motivation in most instances, which courts have treated as a separate analysis from arbitrary and capricious. Transferred employees are entitled to be protected from arbitrary or capricious actions and from transfers “actuated by political or other improper motives.” *McKenna v. Sumner County Bd. of Ed.*, 574 S.W.2d 527, 534 (Tenn.1978). (emphasis added)

In *Galyon*, the Court found that the transfer was not arbitrary and capricious and then turned to the issue of improper motivation in applying the “sufficient, demonstrable grounds” standard. *Galyon v. Collins*, No. 03A01-9711-CH-00513, 1998 WL 331300, at *7 (Tenn. Ct. App. June 24, 1998). The Court provides:

[I]n cases that may involve mixed motives, the rule is as follows: If valid programmatic grounds exist that will justify finding that a challenged transfer was “necessary for the efficient operation of the school system,” the reviewing courts should not invalidate the transfer because the evidence also suggests that some of the local officials who made the decision might have had ulterior motives. Thus, the **controlling question in cases of this sort is whether the local education officials had sufficient, demonstrable grounds** upon which to base their decision that a transfer was necessary for the efficient operation of the school system. We believe that the above rule controls in the instant

case. The trial court found that “valid programmatic grounds” existed to justify the transfer, independent of any improper motive. *Id.* (emphasis added)

Consistently, the Court in *Hyde* provides:

We prefer to interpret the McKenna v. Sumner County Board of Education opinion as *prohibiting unjustified transfers taken with improper motivation*. If valid programmatic grounds exist that will justify finding that a challenged transfer was ‘necessary for the efficient operation of the school system,’ the reviewing courts should not invalidate the transfer because the evidence also suggests that some of the local officials who made the decision might have had *ulterior motives*. Thus, the controlling question in cases of this sort is whether the local education officials had *sufficient, demonstrable grounds* upon which to base their decision that a transfer was necessary for the efficient operation of the school system.

State ex rel. Hyde v. Bills, No. 86-8-II, 1986 WL 6565, at *9 (Tenn. Ct. App. June 11, 1986) (emphasis added)

It is clear from the case law that (1) the arbitrary and capricious analysis is separate from the improper motivation analysis, and (2) the “sufficient, demonstrable grounds” standard has only been applied in the case of improper motivation analysis. In the present case, improper motivation is not at issue on appeal nor was it part of the test used by the Court of Appeals. If there is no dispute that the Director’s decision was based solely on his belief that an administrative license was required for the position, there can be no basis for an improper motive. The Trial Court found there was no improper motive and the Court of Appeals did not disturb that finding. Thus, the “sufficient, demonstrable grounds” analysis was erroneously applied by the Court of Appeals.¹

¹ The United States District Court for the Western District granted summary judgment in favor of the Henry County Board on the federal age discrimination claims, which the Court of Appeals for the Sixth Circuit affirmed on appeal, but declined to exercise jurisdiction on Geller’s wrongful transfer claim under Tenn. Code Ann. § 49-5-510. Geller then refiled his state law claim in this action after the internal complaint with the school system regarding his transfer was dismissed as being without

The Court of Appeals' ruling should be reversed. Application of the "sufficient, demonstrable grounds" standard was erroneous because it only applies in the context of improper motivation for a transfer, which is not present here. The Court of Appeals ruling would add confusion to the well-established precedent of the "arbitrary and capricious" standard in this context. Is there a presumption of good faith and reasonableness absent clear evidence to the contrary, or is a director required to show "sufficient, demonstrable grounds" in order to satisfy those elements? See *Marion County Bd. of Educ. v. Marion County Educ. Ass'n*, 86 S.W.3d 202, 208 (Tenn. Ct. App. 2001).

Moreover, the Court of Appeals' ruling was the first to apply "sufficient, demonstrable grounds" outside of an improper motivation analysis and the first to find it was not satisfied. This is not an acceptable "different way of ascertaining whether statutory standards have been met" as Gellar would suggest. (Gellar Brief; 23). This is a misapplication of a legal standard previously reserved for cases involving improper motivation, which should render the decision erroneous. This more stringent standard for transfers made under Tenn. Code Ann. § 49-5-510 would interfere with the efficient operation of schools that justifies the presumption of good faith for director action in the first place.

- II. Even if the Court of Appeals was correct in its application of the arbitrary and capricious standard, it erred in finding that the transfer was not reasonable under the circumstances and in violation of Tenn. Code Ann. § 49-5-510.

merit. Although his claims under Tenn. Code Ann. § 49-5-510 may not be dependent on his allegation of age discrimination, it is significant that improper motive is not before this Court on appeal.

Geller's complaint is based on the Teacher Tenure Act, which "does not guarantee continuity of employment in a particular assignment or school." *Van Hauser v. Warren Cty. Bd. of Educ.*, 807 S.W.2d 230, 240 (Tenn. 1991). A director may transfer a tenured employee pursuant to Tenn. Code Ann. § 49-5-510. When so made, it need not necessarily be preceded ...by formal written notice and a hearing, so long as it is made in good faith, in accordance with the criterion set forth in the statute – efficient operation of the school system." *McKenna v. Sumner County Bd. of Educ.*, 574 S.W.2d 527, 534 (Tenn. 1978). If a transfer is not made in good faith and is the product of arbitrary, capricious, or improper conduct, a tenured teacher is entitled to present a direct legal challenge to the courts. *Id.* Judicial review ... must be conducted in light of the broad discretion which the statute clearly gives. *Id.*

The Court of Appeals created a three-part test in determining compliance with the transfer statute: (1) the transfer must be made in good faith and not in an arbitrary and capricious manner; (2) the transfer must be made in order to further the efficient operation of the school system; and (3) the transfer shall be in accordance with board policy. *Geller*, 2018 WL 4944542, at *6.

A. The transfer decision was made in good faith and not in an arbitrary and capricious manner.

The reasonableness and good faith of Miles' actions and decision to transfer Geller are supported by the record. Miles' decision is afforded a presumption of good faith, and the party challenging the decision carries the burden to establish that the decision was arbitrary and capricious. *Lawrence Cty. Educ. Ass'n v. Lawrence Cty. Bd. of Educ.*, 244 S.W.3d 302, 315 (Tenn. 2007). A decision is arbitrary and capricious if it is not based on any course of reasoning or exercise of judgment or is one that disregards

facts or circumstances of the case without some basis that would lead a reasonable person to reach the same conclusion. *City of Memphis v. Civil Serv. Comm'n of City of Memphis*, 238 S.W.3d 238, 243 (Tenn. Ct. App. 2007).

We turn first to the letter that resulted in the transfer. On May 26, 2012, Kenneth Nye, Research and License Specialist for the Office of Teacher Licensing, mailed a letter to Geller (the "Letter") in response to his application to advance from a Beginning Administrator License (BAL) to a Professional Administrator License (PAL). Miles was mailed a copy² (TE; 5) of the Letter which, when read as a whole, could lead a reasonable person to conclude that the administrative license was required. Pertinent portions of the Letter are as follows:

"This letter is to inform you that our office has denied the application for advancement...The reason for denial is you do not currently hold a Beginning Administrator License. Your state license file does not indicate a previous application or that you attempted to and passed the required Praxis SLLA exam.

Please note that beginning with 2009-2010 school year, the State Board of Education has required educators serving as an assistant principal with more than 50% time of instructional leadership responsibilities to hold an administrator license. Educators serving as principal or instructional supervisor have always been required to hold an administrator license. Your employment record indicates serving as an assistant principal starting with the 2006-07 school year.

I suggest you contact your university, so they can assist you in determining what else must be completed along with the Praxis SLLA exam to be eligible for the new administrator license called the Instructional Leadership License...You and the employing Tennessee school system can apply for the "Aspiring" level of the new administrator license...while serving as an assistant principal once you are admitted to the new Leadership Program." (TE; 5) (emphasis added)

² It is noteworthy that this dispute began with Mr. Geller's own request to advance his administrative license, which he did not hold, and claims was not necessary for his position.

Miles could reasonably interpret the Letter as notice from the Department of Education regarding a licensure issue of an employee. The “50% Rule” is mentioned a single time without reference to the regulatory basis (Tenn. Comp. R. & Reg. R. 0520-02-03-.03(5)) and without any explanation of what constitutes “instructional leadership responsibilities”. The Letter omits any explanation of the 50% Rule nor does it mention that such assistant principals may be enrolled in a State Board of Education approved instructional leadership preparation program, i.e. working towards a license, to satisfy the requirement.³ Further, the Letter states that “instructional supervisor[s] have always been required to hold an administrative license” which Miles might also reasonably interpret as applying to Geller. Mr. Nye “suggested” that Geller contact his university to assist with the Praxis SLLA exam and explained in detail the process for obtaining the new administrator license. Taken as a whole, the Letter could lead a reasonable person to conclude that an administrative license was required.

Second, the metric on which Geller was evaluated was entitled “Tennessee Instructional Leadership Standards and Indicators”, an important fact that the Court of Appeals failed to mention. Geller admitted that every single one of the 38 Standards and Indicators on which he was evaluated as an administrator involved instructional leadership. (ATVol III; 379). (ATVol IV; 386-91). (TE 3). Geller engaged in all of these standards and indicators while an assistant principal and received a composite score of five which indicated that his supervisor, Mr. McFerren, believed that he performed well on each instructional leadership standard and indicator. (ATVol IV; 387-391). (TE; 3).

³ The Court of Appeals cites the regulation currently in place (Tenn. Comp. R. & Reg. R. 0520-02-03.03(5)) rather than the regulation in place at the time of the alleged violation (Tenn. Comp. R. & R. 0520-02-03(6)(2014) (See TE 16), which required an assistant principal pursuant the 50% Rule to be either properly licensed or be enrolled in a State Board approved instructional leadership program.

Geller in fact relies on the results of his evaluation under this model as a basis for the impropriety of his transfer, while at the same time, asserting he was not in a primarily instructional leadership role. An investigation of Geller's duties would likely have started with his job evaluation which would have led any reasonable person to conclude that Geller was primarily involved in instructional leadership. Even the tasks Geller argues were "noninstructional" may be fairly categorized under various provisions of said evaluations as "instructional." (See Board Brief; 34-35)⁴ Without any guidance in statute or regulation regarding the definition of instructional leadership responsibilities, the most accurate guidance is probably the very evaluation used for Geller.

Third, the Court of Appeals focused on Miles' failure to conduct an investigation to determine whether Geller's job duties met the 50% instructional threshold for administrative licensure. However, Geller was clear that he would not seek to obtain a license regardless of the circumstances. When Geller met with Miles, he explained to Miles that he did not have an administrator's license, did not intend to obtain one, and in fact, did not need one for his administrative assignment. (ATVol I; 57- 59, 62-63, 107-

⁴ "Specifically, while the Plaintiff maintains that student discipline, facility safety, and lunchroom supervision are not hallmarks of instructional leadership, the TSBOE disagrees, because Indicators 2 and 3 under the "Culture for Teaching and Learning" category state that an instructional leader "[a]dvocates, nurtures, and leads a culture conducive to student learning" and also "[d]evelops and sustains a safe, secure and disciplined learning environment." In fact, according to the TSBOE, even the time spent by the Plaintiff administering school fiscal and banking matters were spent in the area of instructional leadership since Indicators 3, 4, and 5 under the "Management of the School" category explain that an instructional leader "[g]arners and employs resources to achieve the school's mission," "[p]repare and regularly monitors an annual operational budget that aligns with the school's improvement plan", and "[m]obilizes community resources to support the school's mission." Of course, it is indisputable that the Plaintiff's duties in individually advising students, conducting departmental collaborative curriculum meetings, and evaluating teachers are of an instructional leadership nature since these duties are described by Indicators 2 and 12 under the "Culture for Teaching and Learning" category, Indicators 1 and 2 under the "Instructional Leadership and

08, 115). (ATVol IV; 383, 385). Geller would not have obtained an administrator's license regardless of the results of the investigation the Court of Appeals seeks to impose. Miles would have kept Geller in the same position had Geller stated he would start working toward his licensure. (TRVol V; 644); *Geller*, 2018 WL 4944542, at *11. The trial court found this testimony to be credible and was in the best position to do so. (TRVol V; 644).

The record shows that Miles did not wish to transfer Geller and would not have done so if the administrative license was not required. Miles' efforts to accommodate and assist Geller went far beyond his obligations. Miles was under no obligation to offer Geller any additional supplements to his salary. (ATVol I; 81-82). (ATVol III; 349-50). Yet, Miles offered Geller an opportunity to earn additional income to lessen the financial impact of the transfer.

Miles allowed Geller an opportunity to earn a \$1,000 supplement during the 2012-2013 school year. (ATVol I; 76-77). On September 5, 2012, Geller executed an employment contract with Henry County Board of Education memorializing the \$1,000 supplement. (TE; 7). Soon thereafter, Miles and Geller met again, at which time, Miles offered Geller an additional \$3,000 supplement to further mitigate the adjustment to Geller's salary that resulted from the transfer. (ATVol III; 349-50). These efforts support the conclusion that the transfer decision was made in good faith.

Finally, it is reasonable to decide an administrator's license is required when no one has ever held an assistant principal position in Henry County without one. Mr. Mason, one of Geller's previous coworkers and a current administrator in the Henry

Assessment" category, and Indicators 1 and 2 under the "Professional Growth" category, respectively." (Board Brief; 34-35)

County school system, testified that there had not been another unlicensed administrator in the history of the Henry County Board of Education aside from Geller. (ATVol II; 233-34). This fact is not disputed. Geller was the only unlicensed administrator in the entire school system. (ATVol I; 113-14, 139). (ATVol II; 172, 227, 233-34). (ATVol III; 327). In fact, Geller was the only administrator in the modern history of the school system to serve as an administrator without an administrator's license. (ATVol II; 233-34). Miles testified that, in his 24 years as an administrator prior to becoming the Director, he had never knowingly worked with anyone in an administrative position that did not have an administrator's license. (ATVol III; 309-10).

All of the administrators employed by the Henry County Board of Education are in positions of instructional leadership, and as a result, must possess an administrator's license. (ATVol II; 169, 200-01). (ATVol IV; 417, 430). Further, all administrators in the Henry County Board of Education's school system spend the majority of their time in instructional leadership. (ATVol III; 357). As an administrator in the Henry County school system, Geller spent the majority of his time in a role of instructional leadership. (ATVol II; 203-04). (ATVol III; 357). In fact, at trial, even Geller admitted that he was an instructional leader as an assistant principal. (ATVol I; 394). Based on all the foregoing evidence in the record, Miles' actions were reasonable under the circumstances and made in good faith.

B. The transfer was necessary to the efficient operation of the school system and made in accordance with board policy.

It is the duty of the director of schools to ensure that the laws relating to schools

are faithfully executed and to oversee the licensure status of employees. See Tenn. Code Ann. § 49-2-301(b)(1)(A), (M). Licensure comes with increased training, knowledge, and expertise that ensures teachers and administrators can adequately fulfill the needs of students and possess the skills necessary perform their duties. Proper licensure of employees is surely necessary for the efficient operation of a school system.

Finally, we turn to the issue of board policy. The Court of Appeals found that “because Director Miles had insufficient grounds to conclude that Mr. Geller lacked a required license, Director Miles’ decision to transfer Mr. Geller without consideration of the timing of transfers or Mr. Geller’s stellar evaluations.” *Geller*, 2018 WL 4944542, at *11. (emphasis added) This ruling should be reversed because it is contingent upon the erroneous application of the “sufficient, demonstrable grounds” standard as discussed above. Even assuming, arguendo, the correct standard was applied, if this Court finds the manner of the transfer was not arbitrary and capricious and the presumption of good faith was not rebutted, it should also find that the board policy violations cited by the Court of Appeals are no longer present.

The Court of Appeals found that Miles violated local board policy 5.115, requiring assignments for the ensuing school year by May 15, by not considering the timing of the transfer. Miles received the Letter on May 26, 2012, making it impossible to comply with the May 15 deadline for assignments. (TE; 5). Board policy 5.115 requires initial assignments by May 15, at which point in 2012, Geller was to remain in his current position as assistant principal. Prior to the end of the 2011-2012 school year, Geller signed a letter of intent to continue in his administrative assignment for

the 2012-2013 school year. (ATVol I; 107). This was compliant with local board policy 5.115.

The policy does not require that improperly licensed personnel remain in their position until the subsequent school year if the licensure issue is discovered after May 15. To that end, transfers are addressed separately from assignments under local policy 5.115. (TE; 6). There is no reference to a deadline under the transfer section of the policy. Based on the foregoing, the May 15 deadline for assignments under local policy 5.115 would not have applied to this transfer. The Court of Appeals incorrectly found that local policy 5.115 was violated in this instance.

The Court of Appeals also found that Miles failed to comply with State Board of Education policy in failing to consider “Mr. Geller’s stellar evaluations”. *Geller*, 2018 WL 4944542, at *11. We find it somewhat ironic that the Court of Appeals focuses on Geller’s evaluations entitled “Tennessee Instructional Leadership Standards and Indicators” in support of its position that the transfer decision, undisputedly based on a failure to hold an administrative license required for a primarily instructional leadership role, was not made in good faith. (TE; 3). See *supra* for details of the evaluation.

The Court of Appeals references State Board of Education policy 5.201 (TE; 4) and local policy 5.109 (TE; 15) in discussing the alleged state and local policy violations. The Court of Appeals relies primarily on Tenn. Code Ann. § 49-1-302, which provides:

“The evaluations shall be a factor in employment decisions, including, but not necessarily limited to, promotion, retention, termination, compensation and the attainment of tenure status...”

Transfer is not mentioned although it is not an exhaustive list.

The statute requires that evaluations be a factor but not that they be considered in every instance as Geller and the Court of Appeals would insist. *Geller*, 2018 WL 4944542, at *7; (Geller Brief; 20). In applying factor tests, Tennessee courts generally imposed an obligation to consider all the *relevant* factors. See *Bd. of Prof'l Responsibility of Supreme Court of Tennessee v. Barry*, 545 S.W.3d 408, 421 (Tenn. 2018); *Athlon Sports Commc'ns, Inc. v. Duggan*, 549 S.W.3d 107, 122 (Tenn. 2018); *Gray v. Vision Hosp. Grp., Inc.*, No. M2016-00116-SC-R3-WC, 2017 WL 384430, at *7 (Tenn. Workers Comp. Panel Jan. 26, 2017); *State v. Davidson*, 509 S.W.3d 156, 211 (Tenn. 2016); *State v. Hamilton*, 498 S.W.3d 7, 17 (Tenn. 2016) (emphasis added) It is not necessary to consider all factors when it is clear that at least one necessary factor cannot be established. *State v. Clayton*, 535 S.W.3d 829, 848 (Tenn. 2017)

Courts are not obliged to spend time on analysis and consideration of factors deemed irrelevant to the final decision. Such a requirement would be contrary to judicial economy. It stands to reason that the same general obligation should apply to the efficient operation of schools, specifically the Director in making employment decisions.

Here, it was a necessary factor that Geller have proper licensure for his position. An implied condition precedent under Tenn. Code Ann. § 49-1-302 is that the employee satisfies the job qualification requirements before consideration of performance. The evaluations were a factor, a factor determined to be irrelevant to the Director's decision because the necessary factor of proper licensure could not be established. It is an unreasonable interpretation of this law to require a director to go through the process of reviewing an evaluation if it is fairly determined that an employee does not hold a

necessary license. Miles reasonably determined that Geller lacked the necessary license and a transfer was required; the contents of the evaluation would have no effect on the outcome.

Thus, if Miles made the decision to transfer in good faith and not in an arbitrary and capricious manner, it was not necessary for him to consider an irrelevant factor such as Geller's evaluation. A review of the evaluation titled "Tennessee Instructional Leadership Standards and Indicators" would have only supported Miles' decision that the administrative license was required. The Court of Appeals erred in finding that board policy was violated by failing to consider an evaluation because it was an irrelevant factor in the transfer decision.

Finally, the Court of Appeals cites local policy 5.102, which provides as follows:

"All administrative and supervisory positions in the school system are established initially by the Board, by state law, or State Board Rule, Regulation, and Minimum Standards. To be considered for certified administrative or supervisory positions, the *applicant* must show the following qualifications:

1. Professional teaching certification; and
2. Administrative or supervisory certification and experience in accordance with state law and State Board Rules and Regulations in the appropriate area based on the minimum of a master's degree." (emphasis added)

First, if strictly construed, this policy governs initial applications, not an existing employee who comes to lack the necessary license due to change in regulations as with Geller. Nevertheless, even if it applied to Geller, it would require he be licensed in accordance with state law and regulation.

The issue before the court is not whether Geller was required to hold an administrative license pursuant to the 50% Rule. That is a factual determination upon which reasonable minds could differ based on evidence in the record; one neither the

trial court or Court of Appeals felt was necessary to make. Rather, the issue is whether the transfer complied with Tenn. Code Ann. § 49-5-510, i.e. whether Miles' decision was necessary for the efficient operation of schools and not made in an arbitrary and capricious manner, applying the presumption of good faith afforded to such decisions.

As discussed above, this decision was not arbitrary and capricious. There was a reasonable basis for Miles' decision that the administrative license was required, namely the Letter and other facts discussed above and in the Board's brief. Miles' relied on his knowledge of the assistant principal position. It was the result of "a course of reasoning and exercise of judgment." See *Smith v. White*, 538 S.W.3d 1, 11 (Tenn. Ct. App. 2017). Thus, the transfer was compliant with the transfer statute and was made in accordance with local policy 5.102 and Tenn. Comp. R. & Reg. R. 0520-02-03-.03(5).

III. The decision of the Court of Appeals should be reversed because it would interfere with the efficient and effective operation of public schools in Tennessee.

The Court of Appeals held that the transfer was unreasonable because "a review of Geller's specific tasks was required to determine the necessity of an administrator's license in his position as Assistant Principal." *Geller*, 2018 WL 4944542, at *10. This ruling would require an investigation into an assistant principal's tasks in any instances involving licensure requirement in order to determine if more than 50% of their responsibilities involved "instructional leadership" pursuant to Tenn. Comp. R. & Reg. R. 0520-02-03-.03(5). The Court of Appeals chose to impose this obligation on directors notwithstanding its acknowledgement that the "definition of instructional leadership may be unclear in the law." *Geller*, 2018 WL 4944542, at *10.

The term is not defined by any statute or regulation. Testimony at trial in this matter displayed the broad range of beliefs among experienced educators as to what constitutes instructional leadership – opinions from all tasks performed by an assistant principal to very few. The Court of Appeals offered no guidance in its ruling. Rather, it decided to require an investigation and analysis of instructional leadership tasks while acknowledging ambiguity surrounding the term. Directors will now be forced to make assumptions as to what constitutes instructional leadership and make potentially inconsistent decisions regarding the licensure requirements for assistant principals. If an assistant principal were considering a position in another district, how are they to know whether the tasks would implicate the 50% Rule or how the Director interprets “instructional leadership responsibilities?”

The Court of Appeals stated that “[t]o interpret Tennessee law to require all Assistant Principals to hold an administrative licenses regardless of their duties would essentially render Tenn. Comp. R. & Reg. R. 0520-02-03.03(5) meaningless.” *Id.* at *9-10. While that may be an accurate statement if applied to every director in the State, it does not render Miles’ decision unreasonable, arbitrary, or capricious or in bad faith under the circumstances of this case. See *infra* for further discussion on the reasonableness of Miles’ actions.

Public education in Tennessee is administered at the local level through boards of education for a reason – each district has a distinct set of needs, which are best addressed with local oversight and administration. What the Court of Appeals fails to recognize is the extent of administrative variation in school districts across the state, specifically in the context of assistant principal tasks. For example, a school in a larger

district like Metro Nashville may have several assistant principals, each with a different set of tasks, e.g. one may exclusively handle all discipline, another may handle supervision of students, another may handle teacher evaluations and supervision, etc. It may, in fact, be necessary to conduct an investigation of tasks in certain circumstances to make a reasonable determination of administrative licensure requirements under the 50% Rule. Some schools in other rural districts may only employ one or two assistant principals. In some of those instances, it may be perfectly reasonable for a director to determine the 50% Rule is satisfied without an in-depth analysis of specific tasks; such is the case here.

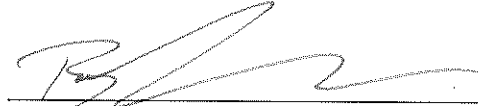
To require an investigation of assistant principal tasks in every instance of licensure requirement determination for transfer purposes, regardless of the circumstances, places an undue and unnecessary administrative burden on directors, especially considering the ambiguity surrounding the term and the potential legal challenges resulting from licensure determination. What level of confidence could a director possibly have in accurately qualifying assistant principal tasks as an instructional leadership responsibility when there is absolutely no guidance in the law? Additionally, the Court of Appeals' ruling might require consideration of an employee's evaluation even in cases where it is irrelevant to a transfer decision, e.g. in cases of inadequate licensure. The Court of Appeals' ruling would interfere with the efficient and effective operation of public schools and is contrary to the legal presumptions favoring director discretion in administrative decisions.

CONCLUSION

Based on the foregoing, TSBA respectfully submits that the decision of the Court of Appeals was in error and should be reversed. The Court of Appeals erred in its application of the “sufficient, demonstrable grounds” standard because there is no issue of improper motive. Even if the Court of Appeals was correct in its application of this standard, it erred in finding that the transfer was not reasonable under the circumstances and in violation of Tenn. Code Ann. § 49-5-510. The record supports the trial court’s conclusion that the transfer decision was made in good faith and not in an arbitrary and capricious manner; that it was necessary for the efficient operation of the school system; and that it was made in accordance with board policy.

As an amicus curiae in this instance, TSBA urges this Court to recognize the practical implications of the Court of Appeals’ ruling, which will increase the administrative burden on school systems, particularly directors, reduce the level of deference afforded to directors’ management decisions, and create confusion among TSBA’s constituents regarding application of the arbitrary and capricious standard to transfers under Tenn. Code Ann. § 49-5-510. TSBA respectfully requests that the decision of the Court of Appeals be reversed.

Respectfully submitted,



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CERTIFICATE OF SERVICE

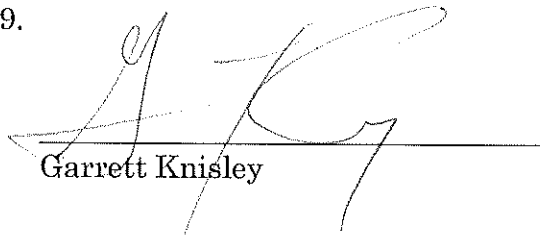
I hereby certify that a true and exact copy of the foregoing has been served upon counsel for parties in interest herein:

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by mailing to said counsel to their offices VIA United States Mail, postage prepaid.

On this 27th day of June 2019.



Garrett Knisley