

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>DAVID DERU,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2011-09</b>
	:	
<b>COBB COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by David Deru from a decision by the Cobb County Board of Education (“Local Board”) non-renewing his employment contract for the 2010-2011 school year due to a reduction in force (“RIF”), incompetency, willful neglect of duty, and other good and sufficient cause. On appeal, Appellant challenges the evidence supporting the Local Board’s decision regarding the reduction in force. However, Appellant only challenges the sufficiency of the evidence supporting the decision regarding the findings on incompetency, willful neglect of duty, and other good and sufficient cause. Appellant further asserts that the Local Board violated his rights by failing to follow the hearing procedures required by O.C.G.A. § 20-2-940(e)(1). For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

**I.     PROCEDURAL BACKGROUND**

Appellant was timely notified that his annual contract for the 2010-2011 school year was being recommended for non-renewal. Appellant appealed the non-renewal recommendation of his employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board non-renewed Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

**II.    FACTUAL BACKGROUND**

Appellant was employed by the Local Board as a Science Teacher for approximately nine (9) years. Appellant taught at South Cobb High School for the first eight (8) years. For the 2008-2009 school year, the Appellant received a “Needs Improvement” rating, but was extended a contract for the 2009-2010 school year. Appellant was on a Professional Development Plan (“PDP”) for the 2009-2010 school year. Appellant was transferred to Hillgrove High School for the 2009-2010 school year.

At the hearing, the Local Board provided evidence regarding the RIF process. Specifically, the Local Board provided evidence that it eliminated teachers based upon budgetary reasons and that the selection process was based upon performance.

At the hearing, the Local Board provided testimony from several employees regarding Appellant's performance during the 2009-2010 school year. Specifically, the Local Board provided testimony regarding the observations of Appellant's performance, complaints from students and teachers, teaching deficiencies, classroom management, and instructional effectiveness. These performance deficiencies were documented by the Local Board in observations and a Professional Development Plan (PDP), and discussed with Appellant. However, Appellant's performance did not improve.

### **III. ERRORS ASSERTED ON APPEAL**

#### **A. The Record Evidence.**

This Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 8, 1976). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

It is well settled that O.C.G.A. § 20-2-940(6) allows a local board to reduce staff due to budgetary reasons. Curry v. Dawson County Bd. of Educ., 212 Ga. App. 827 (1994). "The essential question is whether the reduction in force program is required. Once the necessity of the reduction in force program has been shown, a local board can adopt, or approve, any number of methods for selecting which employees will be terminated." Hinton v. Warren County Bd. of Educ., Case No. 2004-19 (Ga. SBE, Dec. 2003). "The only [other] question for review is whether there was evidence to support the Local Board's decision, or whether the Local Board's decision was arbitrary and capricious." Applewhite v. Turner County Bd. of Educ., Case No. 1997-29 (Ga. SBE, Nov. 1997).

In this case, the record contains ample evidence that a RIF was required. The Local Board was undergoing budgetary issues. The Local Board implemented a RIF process based primarily on performance. The record shows that Appellant's performance was deficient. Specifically, he had complaints from students and teachers and he was deficient in his classroom management and instructional effectiveness. Thus, the decision of the Local Board is supported by the evidence.

**B. Local Board Members serving on the Tribunal.**

Appellant contends that the Local Board erred because the hearing tribunal appointed by the Local Board pursuant to O.C.G.A. § 20-2-940(e)(1) was comprised of three members of the Local Board. For the reasons set forth below, this assertion is without merit.

Official Code of Georgia Annotated § 20-2-940(e)(1) provides:

The hearing shall be conducted before the local board, or the local board may designate a tribunal to consist of not less than three nor more than five impartial persons possessing academic expertise to conduct the hearing and submit its findings and recommendations to the local board or its decision thereon.

Appellant contends that O.C.G.A. § 20-2-940(e)(1) requires the Local Board to conduct the entire hearing or appoint a tribunal, but that this provision prohibits the Local Board members from serving as the tribunal members. However, the language in O.C.G.A. § 20-2-940(e)(1) does not prohibit local board members from serving as the tribunal. The only requirements for the tribunal members are that each member is impartial and that each member possesses academic expertise. Moreover, due process rights are not violated without a showing of actual bias. Holley v. Seminole Cnty. Sch. Dist., 755 F.2d 1492, 1497 (11th Cir. 1985). Appellant has failed to identify any evidence that the Board members who served on the tribunal were not impartial or that they lacked academic expertise.

Furthermore, this Board has previously upheld the decision of a local board where the full local board appointed three members to serve as the tribunal members. See Roberson v. Cobb Cnty. Bd. of Educ., Case No. 1995-46 (Ga. SBE, Nov. 1995); see also Evans v. Jefferson Cnty. Bd. of Educ., Case No. 2010-01 (Ga. SBE, Oct. 2009); Withrow v. Larkin, 431 U.S. 35 (1975); Hortonville Joint School Dist. v. Hortonville Education Assoc., 426 U.S. 482 (1976). Therefore, the Local Board did not err by appointing three members of the Local Board to serve as the hearing tribunal.

**IV. CONCLUSION**

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, **SUSTAINED**.

This \_\_\_\_\_ day of October 2010.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS