

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

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| GERALD BROWN, | : | |
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| Appellant, | : | |
| | : | |
| v. | : | CASE NO. 2011-25 |
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| COBB COUNTY BOARD OF EDUCATION, | : | DECISION |
| | : | |
| Appellee. | : | |

This is an appeal by Gerald Brown from a decision by the Cobb County Board of Education (“Local Board”) non-renewing his employment contract for the 2010-2011 school year pursuant to O.C.G.A. § 20-2-940(a)(6) in order to reduce staff due to a loss of students or cancellation of programs. 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 for approximately nine (9) years. For the 2009-2010 school year, Appellant worked as a Special Education teacher and co-taught science and health classes at Kennesaw Mountain High School. The Local Board implemented a reduction in force (“RIF”) for the 2010-2011 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 RIF selection criteria first considered performance. As part of the performance based criterion, the Local Board first considered teachers who received an “unsatisfactory” rating on their annual evaluation.

At the hearing, the Local Board provided evidence that Appellant received an unsatisfactory rating on his 2009-2010 annual evaluation. The Local Board provide testimony that this rating was based upon Appellant's failure to timely submit lesson plans, his failure to make adjustments to instruction and curriculum, and his failure to maintain accurate and complete records. The Local Board also provided testimony regarding Appellant's four observations showing deficiencies in lesson plans, student assistance, and classroom instruction. These performance deficiencies were documented by the Local Board in observations and the Appellant's annual performance evaluation.

III. ERRORS ASSERTED ON APPEAL

A. The Record Evidence.

On appeal, Appellant's only contention is that the Local Board did not experience a decrease in student enrollment or a cancellation of programs as defined under O.C.G.A. § 20-2-940(6). However, 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); see also Deru v. Cobb County Bd. of Educ., Case No. 2011-09 (Ga. SBE, Oct. 2010). "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).

Thus, 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.

In this case, the record contains ample evidence that a RIF was required by the Local Board because of budgetary issues. In implementing the RIF selection process, the Local Board procedure first considered teachers who received unsatisfactory performance ratings on their 2009-2010 annual evaluation. The record shows that Appellant received an unsatisfactory 2009-2010 performance evaluation based upon his failure to timely submit lesson plans, his failure to make adjustments to instruction and curriculum, and his maintenance of accurate and complete records. The Appellant also received four observations showing deficiencies in lesson plans, student assistance, and classroom instruction. Thus, the decision of the Local Board is supported by the evidence, and it is not arbitrary and capricious.

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 January 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS