STATE BOARD OF EDUCATION

STATE OF GEORGIA

HOPE PORTER,	:	
	:	
Appellant,	:	**CASE NO. 2011-28**
	:	
vs.	:	
	:	
CHATTOOGA COUNTY	:	
BOARD OF EDUCATION,	:	**DECISION**
	:	
Appellee.	:	

This is an appeal by Hope Porter (Appellant) from a decision by the Chattooga County Board of Education (Local Board) to terminate her teaching contract because of a reduction-in-force under the provisions of O.C.G.A. § 20-2-940. Appellant claims that her program was merely transferred and not eliminated. The Local Board's decision is **SUSTAINED**.

Appellant was a special education teacher at the Crossroads Academy. The Crossroads Academy, a stand-alone facility with two teachers and a principal, served as an alternative school and a special education support facility. At the end of the 2009-2010 school year, the Local Board faced a decrease in revenues. The Local Superintendent prepared a reduction-in-force plan and presented it to the Local Board. The plan called for the closing of the Crossroads Academy facility, the release of the three personnel attached to the facility, and the transfer of the students to the high school where teachers would use their off-period to rotate in to teach the students. The Local Superintendent did not evaluate Appellant or consider her length of service or certifications in making his recommendation to the Local Board.

The Local Board adopted the Local Superintendent's recommendation on July 12, 2010. When she was advised that her contract would be terminated under the reduction-in-force plan, Appellant requested a hearing as provided for under the provisions of O.C.G.A. § 20-2-940. The Local Board heard the evidence and decided to uphold the decision to terminate Appellant's contract. Appellant then appealed to the State Board of Education.

O.C.G.A. § 20-2-940(a)(6) provides for the termination of a teacher's contract "[t]o reduce staff due to loss of students or cancellation of programs." Appellant claims that her program was not cancelled but was merely transferred to a new location. Since her program was not cancelled, she claims that her contract should not have been terminated.

The State Board of Education has previously held that if a local board of education decides to provide services under a different model with fewer teachers, then a "program" may be considered to have been cancelled. *See, Haines v. Marietta City Bd. of Educ.*, Case No. 2011-19 (Ga. SBE, Jan. 13, 2011). This is true even if the students involved in the program will continue to receive the same services under the new model.

Although it is true that Appellant's program was transferred and the students will still receive special education instruction, the method by which they will be taught has been entirely changed under the new structure. There is no longer a dedicated special education teacher to provide the services. We, therefore, conclude that the Crossroads Academy "program" was cancelled by the Local Board and Appellant, as one of the teachers at the Academy, was subject to having her contract terminated.

Appellant claims that the Local Superintendent failed to follow the Local Board's reduction-in-force policy because he did not do an evaluation, and did not consider length of service or certifications. If the Local Superintendent had followed the policy, Appellant claims that she would have been retained because of her length of service and her qualifications. As a result, Appellant claims that the termination of her contract was arbitrary and capricious.

The Local Board's reduction-in-force policy provides, in part:

> Factors to be considered by the Superintendent in devising a RIF plan shall include, first and foremost, the professional expertise, effectiveness and overall job performance of individual employees. Only where demonstrated competence and expertise are equal among employees shall other factors such as tenure status, level of certification, and length of continuous service with the Chattooga County Board of Education be considered in order to make recommendations for the termination or downgrading of an employee's position.

Chattooga County Schools – Board Policy Manual, Descriptor Code: GBKA (Adopted 3/13/2006).

Appellant's argument is the same argument that was made in *Byrd, et al. v. Randolph Cnty. Bd. of Educ.*, Case Nos. 2010-70 – 2010-74 (Ga. SBE, Jul. 8, 2010), where the State Board of Education stated that the reduction-in-force policy serves as a guide for devising a plan. The reduction-in-force policy, by its own terms, does not expand a teacher's due process rights beyond what is contained in the Fair Dismissal Act. In the instant case, the entire Crossroads Academy was closed and all of the personnel attached to the Academy were released. Under these circumstances, it was unnecessary for the Local Superintendent to perform an evaluation. The State Board of Education, therefore, concludes that the Local Superintendent's failure to perform an evaluation or consider other factors did not make the reduction-in-force plan arbitrary or capricious.

Appellant also argues that there was an unauthorized change in the reduction-in-force policy by the Local Board because it adopted the plan proposed by the Local Superintendent. Under our view, however, there was no change in the reduction-in-force policy by the Local Board or the Local Superintendent. The Local Superintendent performed all of the necessary steps called for in the policy.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board did not deny Appellant any of her due process rights and that the termination of her contract because of a reduction-in-force was proper. Accordingly, the Local Board's decision is **SUSTAINED**.

This _____ day of March 2011.

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MARY SUE MURRAY
VICE CHAIR FOR APPEALS