STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT L. JONES, Appellant, vs. MERIWETHER COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1979-4

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact of the Hearing Officer are made the Findings of Fact of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the Meriwether County Board of Education did not afford Appellant due process in that the notice of the hearing did not comply with the provisions of Ga. Code Ann. §32-2103(c) and with the other provisions found in Ga. Code Ann. §32-2101(c), et. seq. (Ga. Laws, Acts 1975, p. 360, et. seq.) and that because thereof all subsequent proceedings were invalid, and

DETERMINES AND ORDERS, that the decision of the Meriwether County Board of Education herein appealed from is hereby reversed.

Mrs. Oberdorfer was not present.

This 9th day of August, 1979.

Thomas K. Vann, Jr.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

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ROBERT C. JONES, Appellant, vs. MERIWETHER COUNTY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1979-4 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

Robert L. Jones (hereinafter "Appellant"), a former principal and then Attendance Supervisor for the Meriwether County School System (hereinafter "Local System"), has appealed from a decision by the Meriwether County Board of Education (hereinafter "Local Board") to sustain his "demotion" to the position of classroom teacher. The appeal contends that the charges and evidence did not constitute good and sufficient cause to demote, the decision of the Local Board was arbitrary and capricious, and the notice of the hearing did not comply with the requirements of the Fair Dismissal Law (Ga. Code Ann. §32-2101c et seq.). The Local Board argues in response that Appellant was not demoted and, therefore, was not entitled to a hearing. Alternatively, the Local

Board argues that Appellant waived the requirements of the statute by voluntarily appearing at the hearing. The Hearing Officer recommends that the decision of the Local Board be reversed.

PART II

FINDINGS OF FACT

On April 14, 1978, the local superintendent sent Appellant a letter which stated that his position as attendance supervisor had been abolished by the Local Board and that his services were terminated as of the close of the work day on June 15, 1978. Appellant engaged an attorney to represent him and the attorney sent a letter to the superintendent on April 19, 1978 requesting a hearing and pointing out that Appellant was a tenured employee with the right to a hearing if his services were to be terminated. The superintendent then wrote to Appellant on May 10, 1978 and offered him a teaching position in a junior high school at a salary slightly in excess of $13,000. The superintendent also wrote another letter to Appellant on the same date which stated that the Local Board had voted to grant a hearing. The superintendent then asked Appellant to meet and set a convenient hearing date.

Appellant signed the contract for a teaching position, but his attorney pointed out to the superintendent that the teaching position appeared to represent a demotion. A hearing was requested on the reasons for the demotion. Appellant then received a notice, dated July 7, 1978, which simply stated in full:

> "You are hereby commanded to appear before the Meriwether County Board of Education on July 11, 1978, at 7:00 p.m. for a hearing on your complaint."

A hearing was held on July 11, 1978. Appellant appeared with his attorney and objected to the hearing on the basis that the notice of the hearing was legally insufficient because no reasons for the demotion were stated, a list of the witnesses to be called was not given, and there was no concise summary of the testimony to be given. The objection was overruled and the hearing conducted. At the conclusion of the hearing, the Local Board issued its decision "to retain Mr. Jones as teacher . . . for the school year 1978-79." There were no findings of fact issued by the Local Board. Appellant appealed to the State Board of Education on August 9, 1978, and the local superintendent was requested to furnish a transcript of the hearing.

The transcript was not prepared and submitted to the State Board of Education within 30 days. Appellant's attorney began writing monthly letters asking for

the transcript to be forwarded to the State Board of Education. On February 6, 1979, the transcript was sent forward.

The evidence presented at the hearing showed that Appellant had been a principal with the Local System for ten years. He was then transferred to the position of Attendance Officer during the 1977-78 school year. The position of Attendance Officer was an administrative position which paid a salary of approximately $15,600. Appellant had been employed by the Local System in an administrative capacity for longer than all but three of ten principals in the school system.

The position of classroom teacher resulted in a lower annual salary and a lessening of supervisory responsibilities. Appellant was fully certified for an administrative position and held an A-5 degree. He was not, however, certified for the teaching position he accepted. It was necessary for him to take ten quarter hours of courses by the end of the 1978-79 school year in order to maintain his position.

The Local System's reason for Appellant's termination was the abolishment of the position of Attendance Supervisor in order to maintain the county tax digest at a level which was not significantly higher than that of the previous year. There was no evidence presented which was directed to Appellant's ability.

PART III

CONCLUSIONS OF LAW

It was undisputed during the hearing that Appellant was a tenured employee with more than three years service with the Local School System. Ga. Code Ann. §32-2103a provides that if any professional school employee has been employed for more than three years, "then the nonrenewal of the contract of such teacher or other [professional] person or his demotion. . . shall be as provided by this section." (Emphasis added). The section then goes on to require written notice of a "tentative decision" to be given to the employee by April 15 of the year preceding the school year in which the demotion or nonrenewal is to be effective. If the employee makes a request prior to May 1 for a hearing, the employee must be given a "written statement . . . of the reasons for the demotion, in accordance with the provisions relating to notice as set out . . . in subsectoin (b) of section 32-2101c."

The Local Board argues that it was not required to give Appellant a hearing because the position of attendance supervisor was abolished. The statute, however, does not provide for any exceptions in granting a hearing to a professional employee who has more than three years with the school system if the employee is to

be terminated or demoted. The Hearing Officer, therefore, concludes that Appellant had a right to the hearing before he was discharged as an attendance supervisor.

The section also requires that the initial notice to the employee be a notice of the "tentative decision". In the instant case, however, the notice given to Appellant on April 14, 1978, stated "This will terminate your services at the close of the work day of June 15, 1978." The language of the letter leaves little doubt that the decision to terminate Appellant was not a tentative decision as required by the statute. Appellant was denied the required due process when the decision was made to terminate his services without the benefit of a hearing.

Appellant has raised the issue that the notice of the hearing was deficient because it was not given at least ten days before the hearing and because it did not give the reasons for the demotion or a list of the witnesses who would be testifying. Ga. Code Ann. §32-2101c requires:

> "(b) . . . written notice of the charges shall be given at least 10 days before the date set for hearing, and shall state:
> (1) The cause or causes for his . . . demotion in sufficient detail to enable him fairly to show any error that may exist therein;
> (2) The names of the known witnesses and a concise summary of the evidence to be used against him . . .; (3) The time and place where the hearing thereon will be held; . . . ."

The Local Board argues that they were not required to give Appellant a hearing and therefore the notice requirements were not applicable. Additionally, the Local Board argues that Appellant waived any defects in the notice by voluntarily appearing at the hearing. As previously stated above, however, Appellant was entitled to a hearing regardless of whether he was being demoted or his contract was being nonrenewed. Since he was entitled to a hearing, all of the requirements governing notice were applicable. Appellant's counsel specifically objected to the conduct of the hearing because of the deficiencies contained in the notice of the hearing, but he was overruled. The notice of the hearing simply stated that Appellant was commanded to appear at a hearing to be held four days after the notice was given. A list of the reasons for his demotion, or of reasons for the non-renewal of his contract as attendance supervisor, was not given, nor was he given a list of the witnesses who would testify against him.

The Hearing Officer concludes that Appellant was entitled to a hearing with all of the attendant rights of notice, and that the notice given to Appellant was deficient. Additionally, Appellant did not waive any of his rights by his voluntary appearance at the hearing because his counsel specifically raised an objection to going forward with the hearing, but was overruled by the

Local Board.

The final issue raised by Appellant on appeal was the sufficiency of the evidence presented at the hearing. Ga. Code Ann. §32-2101c (e) provides that "In all hearings, the burden of proof shall be on the school system . . . ." In the instant case, the only evidence presented by the Local System for Appellant's termination was the fact that his position as attendance supervisor was abolished. The contract of a teacher, principal or other employee can be terminated if there is a reduction in staff due to loss of students or cancellation of programs. Ga. Code Ann. §32-2101c (a)(6). The evidence presented, however, did not indicate that there was any loss of students in the school system. There was evidence that the position of attendance supervisor was abolished, but there was no evidence that the number of administrative positions within the school system was reduced. Thus, although one administrative position was abolished, the total number of positions remainded the same and Appellant was a qualified administrator. If Appellant was uniquely qualified to fill only one position and the position was eliminated because of the cancellation of a program, the Local Board arguably could terminate his services simply by showing that the particular position was abolished and Appellant was not qualified for any other position. It appears, however, that Appellant's qualifications were

not so unique that he was unable to serve in another administrative capacity. He had, in fact, previously served as a principal for ten years.

The Hearing Officer is of the opinion that simply showing that a particular position has been eliminated, without further showing that the employee who holds the position cannot function in another comparable position, is insufficient to sustain the dismissal or demotion of the employee. In the instant case, all of the evidence in the record indicates that Appellant was capable of serving in another administrative position which was available within the Local System. The Hearing Officer, therefore, concludes that the evidence was insufficient to either dismiss or demote Appellant.

PART IV

RECOMMENDATION

Based upon the foregoing findings and conclusions, the record submitted, and the briefs and arguments of counsel, the Hearing Officer is of the opinion that Appellant was denied due process by the Local Board when he was dismissed without the opportunity to have a hearing and when he was given notice of a hearing which was insufficient under the statute. The Hearing Officer, therefore, recommends that the decision of the Meriwether County Board of Education to dismiss Appellant should be reversed,

and that the decision of the Meriwether County Board of Education to demote Appellant should similarly be reversed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer