

STATE BOARD OF EDUCATION
STATE OF GEORGIA

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| JOANNE STEPHENS, | : | |
| | : | |
| Appellant, | : | |
| | : | CASE NO 1991-25 |
| vs. | : | |
| | : | DECISION |
| TROUP COUNTY | : | |
| BOARD OF EDUCATION, | : | |
| | : | |
| Appellee. | : | |

PART I

SUMMARY

This is an appeal by Joanne Stephens (“Appellant”) from a decision by the Troup County Board of Education (“Local Board”) that it had the authority to abolish the position of Director of Language Arts without the affirmative recommendation of the Local Superintendent. The abolition resulted in Appellant’s demotion. Appellant maintains that the Local Board exceeded its authority because school law requires a local superintendent to make an affirmative recommendation before a local board can delete a personnel position. The decision of the Local Board is sustained.

PART II

FACTUAL BACKGROUND

Appellant worked in the Troup County School System for over twenty-five years. Before 1989, Appellant served as a classroom teacher at the Troup County Comprehensive High School. In 1989, the Local Board created the position of Director of Language Arts and Appellant was assigned to the position on July 13, 1989. Appellant held the Director of Language Arts position

for the 1989-1990 school year and the 1990-1991 school year.

In January 1991, the Local Board discussed the elimination of several administrative positions within the school system, including the Director of Transportation, Director of Central Purchases for Warehouse, and Director of Language Arts. The Local Superintendent recommended to the Local Board that the position of Director of Language Arts be continued for one additional year. The Local Board rejected this recommendation.

On March 26, 1991, the Local Board voted to abolish the Director of Language Arts position, effective July 1, 1991. The Local Board also decided not to provide funding for the Director of Language Arts position in the budget for fiscal year 1992.

On April 11, 1991, the Local Superintendent notified Appellant of the Local Board's decision to abolish the Director of Language Arts position and advised Appellant of her right to a hearing under the Georgia Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.*, because a future reassignment might constitute a demotion. Following this action, the Local Superintendent recommended that the Local Board extend a contract to Appellant for a teaching position in the school system for the 1991-1992 school year. The Local Board offered Appellant a teaching contract and she signed it, but she did not waive her rights under the Fair Dismissal Act.

Appellant requested a hearing before the Local Board to contest her demotion on the grounds the Local Board did not have the authority to eliminate her position. The Local Board conducted a hearing on August 6, 1991. The parties stipulated that all substantive and procedural due process requirements had been satisfied in providing notice setting a hearing. The sole issue before the Local Board was whether it had the authority to abolish the position of Director of Language Arts. The Local Board unanimously concluded that it had the legal authority to abolish the position of Director of Language Arts without the recommendation of the

Local Superintendent. As a result, the Local Board sustained Appellant's demotion. Appellant then filed this appeal to the State Board of Education.

PART III

DISCUSSION

On appeal, Appellant contends that there are no statutory provisions that allow the Local Board to eliminate school system positions without the affirmative recommendation of the Local Superintendent. Thus, Appellant maintains that the Local Board exceeded its authority when it demoted her from Director of Language Arts to classroom teacher.

The Georgia Constitution vests authority for the management and control of school systems in the local boards of education. Ga. Constitution of 1983, Article VIII, Section V, Paragraph II. O.C.G.A. § 20-2-50 also places responsibility with the local boards of education.

Local boards of education have broad discretionary powers in the control and management of the school system. In Pass v. Pickens, 204 Ga. 634 (1949), the Georgia Supreme Court stated:

[T]he Legislature of this State realizes that the functioning accomplishments of the county boards of education would necessitate the exercise of wide powers of discretion. To this extent, such discretion has by law been vested in the county board of education; and unless it is made clearly to appear that they are acting in violation of law or grossly abusing their discretion, the administration of the schools of the counties will not be enjoined by the courts...

O.C.G.A. § 20-2-211 provides:

[all] teachers, principals and other certified professional personnel...shall be employed and assigned by its governing board on the recommendation of its executive officer...

Appellant argues that this statute requires a local board of education to obtain the superintendent's affirmative recommendation before hiring a teacher, principal or other certified

personnel and also forbids a local board of education from eliminating a position without the superintendent's recommendation.

O.C.G.A. § 20-2-211, however, only addresses the hiring of employees. It does not require a superintendent's recommendation for the termination or demotion of a teacher or the elimination of any position that might result in a termination or demotion. Since it does not clearly appear that a local board of education lacks the authority to terminate a position without the recommendation of the local superintendent, the State Board of Education concludes that the Local Board did not exceed its authority.

In this case, the Local Superintendent recommended retention of Appellant's position for an additional year. The Local Board, however, rejected the recommendation. The Local Board had the authority to reject any recommendation made by the Local Superintendent. See, Hatcher v. Board of Public Education and Orphanage, 809 F.2d 1546 (11th Cir. 1987). Thus, even if Appellant's interpretation of O.C.G.A. § 20-2-211 was correct, the Local Board retained the power to override the Local Superintendent's recommendation, which it did in this case.

O.C.G.A. § 20-2-943(a)(2) expressly grants local boards of education the power to non-renew a teacher's or other school employee's contract or demote a teacher or other school employee from one position in the school system to another position in the school system having less responsibility, prestige and salary. There is no language in this section, or any other in the Code, that expressly or impliedly requires a local board of education to obtain the recommendation of the superintendent before it takes such termination or demotion actions. The only limitation on a local board's power to take these actions is that the local board must have grounds for termination or demotion and satisfy due process rights upon termination. O.C.G.A. § 20-2-940 states that "good cause" is a ground for termination or demotion. The State Board of

Education concludes that the Local Board could demote Appellant because her position was eliminated.

Appellant also argues that the Local Board's policies prevent it from eliminating a position without the recommendation of the Local Superintendent. According to Appellant, the Local Board delegated its authority to the Local Superintendent to determine what positions should be maintained in the school system. Appellant's position, however, is without merit. If a local board of education has the authority to delegate a power, it has the inherent authority to exercise that power in its own right at any time. A local board of education cannot abrogate the responsibility placed upon it by the Constitution of the State of Georgia. The State Board of Education concludes that the Local Board did not delegate away its authority to eliminate positions within the school system.

PART IV

DECISION

Based upon the foregoing, the State Board of Education is of the opinion that the Local Board had the authority to abolish the position of Director of Language Arts without the recommendation of the Local Superintendent. The Local Board also had the authority to demote Appellant as the result of her position being eliminated. The decision of the Local Board, therefore is

SUSTAINED.

This 12th day of December, 1991.

Mr. Abrams, Mr. Brinson and Mr. Sessoms were not present.

Larry A. Foster
Vice Chairman for Appeals