STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROGER BLOUGH,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1996-37**
vs.	:	
	:	**DECISION**
WALKER COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Roger Blough (Appellant) from a decision by the Walker County Board of Education (Local Board) to uphold the decision of the Local Superintendent not to offer him a contract for the 1996-1997 school year because a position was unavailable following his leave of absence. Appellant claims that the Local Board's decision was arbitrary and capricious. The Local Board's decision is sustained.

In 1994, Appellant was granted a leave of absence from his position as a science teacher at Ridgeland High School so he could pursue his doctoral degree. At the time Appellant obtained the leave, the Local Board's policy governing leaves of absence provided, in part:

> Leaves of absence without pay for valid reasons may be granted upon the written request of the teacher, the recommendation of the principal of the school, and the approval of the Walker County Board of Education. Upon written request the teacher shall be reinstated contingent on a vacancy for which the teacher is qualified in the school from which the leave was taken unless otherwise stated in the terms of the leave. A teacher wishing to return to serve at the beginning of a school term shall notify the principal in writing prior to March 15 of the previous school term. A teacher who fails to accept assignment in writing within fifteen *(15)* days after notification of an available position shall be considered to have resigned.

Walker County Board of Education Policy GBRIG.

On March 1, 1995, Appellant informed the principal of Ridgeland High School that he wanted to return to Ridgeland High School at the start of the 1995-1996 school year. Appellant was informed by the principal that a position was not available, but that one might become available because the science teacher was resigning. The principal also told Appellant that nothing could be done until the resignation was received. On July 27, 1995, Appellant again talked with the principal and asked whether a position was available because he had been offered a position with the City of Chattanooga and had five days to make a decision. The principal told

Appellant that he had not received a resignation from the science teacher who had accepted a contract for the 1995-1996 school year, but he expected to receive a resignation any day because the teacher had accepted a position with another school.

On July 31, 1995, the principal again talked with Appellant and told him that he had not received the resignation from the other teacher. The principal testified that Appellant told him that he had accepted the position with the City of Chattanooga, but Appellant testified that he did not tell the principal he had accepted the position. At some point after July 31, 1995, the principal received the resignation from the teacher who held the science teacher position and the Local Board accepted the resignation on August 15, 1995. Between July 24, 1995, and August 15, 1995, a third teacher submitted an application for the position of science teacher. The third teacher's application was submitted to the Local Board at its August 15, 1995, meeting and he was employed as the science teacher for the 1995-1996 school year.

Appellant requested a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-1160 to dispute the decision to hire another person for the position of science teacher based upon the Local Board's Policy GBRJG. Appellant contended before the Local Board, and claims on appeal, that under the provisions of Policy GBRIG, the principal was required to inform him in writing whether the science teacher position was available, that the position became available on July 31, 1995, and that the position should have been offered to him on July 31, 1995. The Local Board decided to uphold its decision to hire the third person for the position of science teacher. Appellant claims on appeal that this decision was arbitrary and capricious.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so 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)." *Roderick J. v. Hart Cnty. Bd. of Educ.,* Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). Contrary to Appellant's assertions, the Local Board's policy GBRIG does not require any action by the principal of a school. It is thus immaterial whether the principal of Ridgeland High School wrote to Appellant about the availability of the science teacher position.

The principal testified that he did not receive the resignation from the science teacher originally hired for the 1995-1996 school year until after August 1, 1995. The principal also testified that it was his understanding as of July 31, 1995, that Appellant had accepted a position with the City of Chattanooga. The position of science teacher did not officially become available until the Local Board acted upon the original science teacher's resignation on August 15, 1995. Since Policy GBRIG does not address whether a teacher's acceptance of a position with another school system constitutes withdrawal of a request for reinstatement, it is not arbitrary or capricious for the Local Board to adopt such a position based upon the principal's testimony concerning his understanding of Appellant's position.

Appellant argues that since the policy provides "[u]pon written request the teacher shall be reinstated," a mandatory requirement was placed on the Local Board to reinstate him

whenever a science teacher position became available. Under the circumstances, however, such a requirement was not imposed upon the Local Board by the policy. The policy provides that a teacher shall be reinstated only if a position is available. When Appellant applied for the position on March 1, 1995, a position was unavailable. Similarly, once contracts were awarded for the 1995-1996 school year, the position was again unavailable. At that point, a literal reading of the policy dictates that all requirements to reinstate Appellant ceased, i.e., a position did not exist at the time of application and a position did not exist for the ensuing year, and, since the requirement to reinstate is contingent upon a position being available, the condition precedent to reinstatement did not exist.

Under Appellant's view of the policy, once a request for reinstatement is submitted, the request remains open forever until a position becomes available, regardless of the length of time before the position becomes available. It was not arbitrary or capricious for the Local Board to reject such an interpretation of its own policy.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board's decision was not arbitrary or capricious. Accordingly, the Local Board's decision is SUSTAINED.

This 12th day of September, 1996.

Ms. Julie D. Keeton and Mr. A. Joe McGlamery were present. The seat for the eleventh District is va ant.

Robert M. Brinson
Vice Chairman for Appeals