STATE BOARD OF EDUCATION

STATE OF GEORGIA

THOMAS WHITE,	:	
	:	
Appellant,	:	
	:	**CASE NO. 1998-48**
vs.	:	
	:	**DECISION**
PIONEER REGIONAL EDUCATIONAL SERVICE AGENCY BOARD OF CONTROL,	:	
	:	
Appellee.	:	

This is an appeal by Thomas White (Appellant) from a decision by the Board of Control (Local Board) of the Pioneer Educational Service Agency (RESA) not to renew his contract as a consultant because of a reduction in the funding available for the Drug Free Program in which Appellant worked. Appellant claims that he cannot be dismissed simply because a position has been eliminated when the program m which he worked has not been eliminated and there has not been a reduction in the number of students. The Local Board's decision is sustained.

The facts **in** this case were undisputed. The Local Board adopted a resolution on April 15, 1998 to eliminate one of the two consultant positions involved in the Drug Free Schools Program offered by the RESA to its participating school systems. The Local Board took the action in response to the indicated desire of five school systems to withdraw from participation in the program. Because of the finding mechanisms involved, the RESA would receive less money for the Drug Free Schools Program, even though the number of students served by the program was projected to increase. The Local Board decided that it was necessary to eliminate one of the positions involved in the program to stay within the available finding sources. The RESA Director notified Appellant of the Local Board's decision on April 15, 1998 and he requested a hearing on the issue. A hearing was initially scheduled for June 10, 1998, but the hearing was delayed until July 10, 1998 upon Appellant's request.

At the hearing, Appellant raised two issues: whether his termination was legal under the provisions of O.C.G.A. § 20-2-940(a)(6) and whether the RESA should continue his salary until a decision was reached after the hearing. After the hearing, the Local Board voted to uphold the non-renewal of his contract and, apparently, not to pay him beyond the end of his contract term, which ended on June 30, 1998.[1] Appellant filed a timely appeal to the State Board of Education.

---

[1] The Local Board agreed to divide Appellant's June, 1998 check into three portions so that his checks would continue during the months of July and August, thus continuing Appellant's health benefits for an additional period. During the additional period, the RESA agreed to pay the employer portion of the health benefits.

O.C.G.A. § 20-2-942 and O.C.G.A. § 20-2-940(a)(6) provide that a local board of education can forego the renewal of an employee's contract:

> (6) To reduce staff due to loss of students or cancellation of programs.

O.C.G.A. § 20-2-940(a)(6)(Michie, 1998 Suppl.)

Appellant argues that there was not a loss of students and that the Drug Free Schools Program was not cancelled. Accordingly, Appellant maintains that the non-renewal of his contract was contrary to law. Appellant claims that the Fair Dismissal Act, O.C.G.A. § 20-2-940 *et seq.,* does not contemplate the elimination of only one position in the absence of the elimination of a program or the loss of students.

The State Board of Education has previously addressed the issues raised by Appellant's appeal. In *Curry v. Dawson Cnty. Bd. of Educ.,* Case No. 199 1-7 (Ga. SBE, Apr. 11, 1991) subsequently affirmed by the Court of Appeals in *Curry v. Dawson Cnty. Bd. of Educ.,* 212 Ga. App. 827 (1994), the State Board of Education held that the "cancellation of programs" language of O.C.G.A. § 20-2-940(a)(e) included the right to eliminate a particular position. Similarly, in *Applewhite v. Turner Cnty. Bd. of Educ.,* Case No. 1997-29 (Ga. SBE, Nov. 13, 1997), the State Board of Education held that a local board could eliminate a position because of the expectation of reduced finding even though the program, an alternative school, was not eliminated. Appellant argues that *Curry* is inapplicable because it involved both the elimination of a program and the elimination of an associated position, a coextensive elimination. He also claims that *Applewhite* is also inapplicable because the only question was whether there was any evidence to support the local board's decision. Under our view, Appellant's readings of both *Curry* and *Applewhite* are too narrow.

Under Appellant's view, "a local board of education would be placed in the position of having to maintain a particular position forever once the position was created. Local boards of education would be unable to experiment and determine the most efficient form of administration. We believe that 'programs' in O.C.G.A. § 20-2-940(a)(6) refers to a plan or system used to perform a given task." *Curry v. Dawson Cnty. Bd. of Educ.,* Case No. 1991-7 (Ga. SBE, Apr. 11, 1991).

Appellant also argues that if a given position equates to a program "then the Fair Dismissal Law will cease to have any meaning at all, since all terminations will become selfjustifying and no reasons other than 'we've terminated that position' need be given." Appellant's brief, p. 7. The purpose of the Fair Dismissal Law, however, is not to provide employees with permanent employment, but to provide them with a hearing to determine whether dismissal or non-renewal is done for proper cause. A local board of education can terminate a position, but there has to be some underlying reason for eliminating a

position, such as the need to reduce the budget, which exists in the instant case. A local board of education could not, for example, simply eliminate a position because an administrator did not like the incumbent. A local board of education is subject to the requirement that its decisions cannot be arbitrary or capricious.

The State Board of Education concludes that the principles set forth in *Curry* and *Applewhite* are controlling in the instant case. The Local Board has shown a need to eliminate a position because of budget constraints. While there may have been other methods of addressing the problem, the Local Board's decision to eliminate the position as the way to reduce the budget was not arbitrary or capricious.

Another issue raised in this case is whether the RESA should pay Appellant through the date of the hearing, or the date when Appellant received notice of the Local Board's decision, instead of having his salary terminated at the conclusion of his contract term, which ended on June 30, 1998. Since the Local Board scheduled a hearing so that a decision could have been issued before June 30, 1998 but postponed the hearing for Appellant's convenience, Appellant is estopped to now complain that he should be paid for the period after June 30, 1998. The State Board of Education concludes that the Local Board's decision was not arbitrary or capricious.

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

Mr. J.T. Williams, Jr. was not present. The seat for the 2nd Congressional District is vacant.

This 12th day of November 1998.

Larry Thompson
Vice Chairman for Appeals