**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

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| **KENNETH SADLER,** | : | |
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| **Appellant,** | : | |
| | : | |
| **vs.** | : | **CASE NO. 2008-20** |
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| **FRANKLIN COUNTY** | : | |
| **BOARD OF EDUCATION,** | : | |
| | : | **DECISION** |
| **Appellee.** | : | |

This is an appeal by Kenneth Sadler (Appellant) from a decision of the Franklin County Board of Education (Local Board) to terminate his contract under the provisions of O.C.G.A. § 20-2-940 because of a reduction-in-force. Appellant claims that his termination results from age discrimination and that the Local Board failed to follow its reduction-in-force policy. The Local Board's decision is sustained.

The Local Board employed Appellant as an assistant principal of a middle school. In February 2007, the then local superintendent informed Appellant that he would be transferred to the high school for the 2007-2008 school year to serve as the in-school suspension teacher, which was a position that was totally funded locally. In March 2007, the Local Board hired a new superintendent. The new superintendent learned that the school system was facing a budget deficit for the 2007-2008 school year. The new superintendent submitted different proposals to the Local Board for eliminating the deficit. One of the proposals the Local Board adopted was the elimination of locally funded positions, which resulted in the elimination of Appellant's newly assigned position for the 2007-2008 school year, as well as several other locally funded positions. Appellant asked for and received a hearing before the Local Board after he received notice that his contract for the 2007-2008 school year would be terminated.

At the hearing, Appellant claimed that his termination was the result of age discrimination, that there was no need to terminate him, and that the Local Superintendent had not followed the Local Board's reduction in force policy. Appellant's age discrimination claim was based on his testimony that the former superintendent, in explaining why he was being transferred to the high school, had said, "You are old and this building is large". He also claimed that age discrimination was evidenced by the fact that a younger man who did not have a leadership certificate at the time of his appointment filled his position as an assistant principal at the middle school. At the conclusion of the hearing, the Local Board voted to terminate Appellant's teaching contract. Appellant then filed an appeal with the State Board of Education.

On appeal, Appellant reiterates his claims that: (1) he was terminated because of his age; (2) the Local Superintendent failed to follow the Local Board's policy regarding complaints, and (3) the Local Board failed to show that his termination was necessary to balance the budget. In addition, Appellant claims the hearing officer erred by allowing testimony about a job offer made to Appellant by the Local Superintendent after his position was eliminated by the Local Board, which was prejudicial to Appellant.

Appellant's first argument is that he was terminated because of his age. The record, however, does not support Appellant's contention. The decision to move Appellant to a locally funded position was made by the previous superintendent. The subsequent decision to eliminate all of the locally funded positions was made by the Local Board without regard to who was in those positions. Although there was hearsay testimony that the previous superintendent commented about Appellant's age, there was no competent evidence to support the claim that locally funded positions were eliminated so that Appellant could be terminated. First, hearsay evidence does not have any probative value and cannot be used to establish any fact. *See, McGahee v. Yamaha Motor Mfg. Corp.,* 214 Ga. App. 473, 474, 448 S.E.2d 249, 251 (1994). Second, there was no nexus shown between the comments of the former superintendent and the decision of the Local Board to eliminate locally funded positions. The State Board of Education concludes that the record does not support Appellant's claim of age discrimination.

Appellant also argues that the Local Superintendent failed to act on his age discrimination complaint that he filed following receipt of his termination notice. During the hearing, the Local Superintendent testified that she did not conduct an investigation or take any action on Appellant's complaint because she knew that her actions were not motivated by any desire to terminate Appellant based upon his age. If the Local Superintendent had acted on Appellant's grievance, Appellant's recourse would have been to have the Local Board decide whether his position was terminated because of age discrimination,[1] which is no more than what the Local Board did when it conducted the hearing in the instant case. Appellant, therefore, was not harmed by the Local Superintendent's failure to act on his age discrimination complaint and no basis exists for overturning the Local Board's decision.

Appellant's argument is that the Local Board failed to establish that it was necessary to terminate his position to balance the budget. "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, 242 S.E.2d 374 (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). The Local Board had several options available to balance the budget and it was not obligated to select any particular option for the sake of retaining particular positions or particular personnel. For instance, the Local Board could have raised the tax millage rate high

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[1] *See,* O.C.G.A. §20-2-989.8.

enough to cover the expenses without reducing any salaries or eliminating any positions. Such a course of action, however, is not required of a local board of education. The Local Board's decision was not arbitrary or capricious, but resulted from a weighing of many different options. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision.

Appellant also claims he was harmed by the hearing officer's decision to permit, over objection, the introduction of testimony that the Local Superintendent offered Appellant a position after his termination notice was issued and before the hearing before the Local Board. "[A]dmissions or propositions made with a view to a compromise are not proper evidence". O.C.G.A. § 24-3-37. As argued by the Local Board, however, the Local Superintendent's job offer was not an offer of compromise; there was no *quid pro quo* involved. The offer was made without any conditions attached. Additionally, an offer of settlement is admissible. *See, Charter Mtg. Co. v. Ahouse,* 165 Ga. App. 497, 300 S.E.2d 328 (1983). The State Board of Education, therefore, concludes that the hearing officer did not commit reversible error by allowing the testimony about a job offer made to Appellant by the Local Superintendent.

Based upon the foregoing, it is the opinion of the State Board of Education that the record supports the Local Board's decision and there exists no basis for reversing that decision. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of February 2008.

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William Bradley Bryant
Vice Chairman for Appeals