

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>RITA PORTER,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2010-08</b>
	:	
<b>HEARD COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Rita Porter (Appellant) from a decision by the Heard County Board of Education (Local Board) not to renew her teaching contract because of a reduction-in-force under the provisions of O.C.G.A. § 20-2-940(a)(6). Appellant claims that there was not a reduction in the number of students or a loss of program, that the evidence does not support the Local Board’s decision, and that the Local Board’s decision was arbitrary and capricious because it was based on a subjective analysis of her ability rather than on her experience and certifications. The Local Board’s decision is sustained.

Based upon projected decreases in pupils and revenue from the State, the Local Board adopted a reduction-in-force plan proposed by the Local Superintendent that resulted in the loss of some teaching positions. Based upon State guidelines, the Local Superintendent proposed that the high school science program could be covered with four teachers rather than the five who were employed. After the Local Board approved the reduction-in-force, the high school principal averaged the grades and pass/fail rates of the students in each of the five teachers’ classes and Appellant had the lowest pass/fail rate of the five teachers. Based upon this metric, the principal recommended against the renewal of Appellant’s teaching contract as a science teacher for the 2009-2010 school year. Appellant requested a hearing before the Local Board.

At the hearing, Appellant claimed that she had higher certifications and more experience than the other four teachers. Appellant also argued that her test results were lower than the other teachers were because she was not teaching honors classes like some of the other teachers. Evidence was also presented that the projections on revenues and enrollment were based upon “full time equivalents”, a measurement of the number of students who remain in school the entire day, which is the basis the State uses to allocate funds to the school systems. There was also evidence that the school district was projected to lose more than \$600,000 in State funding for the 2009-2010 school year. After hearing this evidence, the Local Board voted to accept the Local Superintendent’s

recommendation not to renew Appellant's teaching contract. Appellant then filed an appeal with the State Board of Education.

O.C.G.A. § 20-2-940(a)(6) permits the termination of a teacher's contract "[t]o reduce staff due to loss of students or cancellation of programs." Appellant claims that the evidence shows that there was no decrease in student enrollment, nor was there any cancellation of programs, thus there was no basis for terminating her contract. Appellant's argument, however, fails for two reasons.

First, Appellant's claim that student enrollment did not decrease is based upon the number of students projected to be enrolled in school, regardless of the amount of time they would be present in school, rather than on the full-time equivalent students projected for the 2009-2010 school year. The full-time equivalent measurement is based on one student in school for the entire day and is the basis upon which the State allocates money to the school systems. The full-time equivalent number used to make reduction-in-force decisions was based upon projections available at the time the decisions were made, i.e., February and March, while the enrollment figures Appellant posits as the measure of whether there has been a loss of students are end-of-year projections of the anticipated number of students who will enroll when school starts. The two numbers are measurements of two different things – apples and oranges. The question then is whether projected full-time equivalent students is a proper basis for measuring whether there is a loss of students. We conclude that it is.

Local boards of education necessarily have to base their reduction-in-force decisions on projections available in the early part of the year because of the April 15 deadline for giving teachers notices regarding renewals as required by O.C.G.A. § 20-2-942. Full-time equivalent students is the measure by which State funding to local school systems is determined. It is a standardized measure used by local boards of education throughout the state for planning purposes. Since it is a standardized measure and is available when local boards of education have to do their planning, we deem it an appropriate measure on which to base reduction-in-force decisions. Since the full-time equivalent projections in the instant case showed a reduction in students, with an attendant reduction in state funding, the Local Board complied with the requirements of O.C.G.A. § 20-2-940(a)(6).

The second reason that Appellant's argument fails is that the State Board of Education has long recognized that readjustments in organizational structure to economize results in a cancellation of programs. "Contrary to Appellant's argument that a position cannot be eliminated in order to economize, the underlying purpose of being able to terminate teachers due to the loss of students or cancellation of programs is to economize. The provision [O.C.G.A. § 20-2-940(a)(6)] recognizes that if there has been a loss of students or programs have changed, then it is unnecessary for a local board to continue the employment of some of the teachers." *Curry v. Dawson Cnty. Bd. of Educ.*, Case No. 1991-7, pp. 3-4 (Ga. SBE, Apr. 11, 1991). In the instant case, there was evidence that the science program in the high school could be accomplished with four

teachers rather than five. We conclude that this constituted a “cancellation of programs” as provided for in O.C.G.A. § 20-2-940(a)(6).

Appellant also claims that the Local Board’s decision was arbitrary and capricious because she had more credentials than some of the other science teachers and had been employed longer than some of the other science teachers. Appellant also claims that it was improper to use her students’ test scores as a basis for selecting her for non-renewal. “The release of any employee under a reduction in force program is not dependent upon the employee’s competency. The essential question is whether a reduction in force program is required. Once the necessity for a reduction in force program has been shown, a local board can adopt, or approve, any number of methods for selecting which employees will be terminated.” *Hinton v. Warren Cnty. Bd. of Educ.*, Case No. 2004-19 (Ga. SBE, Dec. 2003) (approving a “last in-first out” program). Appellant’s arguments merely go to contesting that the Local Board should have used another method that would have resulted in her retention rather than another teacher. While the Local Board could have used the method advocated by Appellant, it chose, instead, to use a method that the Local Superintendent felt resulted in the retention of the strongest teachers. We conclude that the method was not arbitrary or capricious.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board’s decision and the Local Board’s decision was not arbitrary or capricious. Accordingly, the Local Board’s decision is  
SUSTAINED.

This \_\_\_\_\_ day of October 2009.

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William Bradley Bryant  
Vice Chairman for Appeals