STATE BOARD OF EDUCATION

STATE OF GEORGIA

ROBERT P. EVANS, Appellant, vs. JEFFERSON CITY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1977-16

O R D E R

THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer (a copy of which is attached hereto), and after a vote in open meeting,

DETERMINES AND ORDERS, that the decision herein of the Jefferson City Board of Education to dismiss Appellant Robert P. Evans because of a reduction in staff due to loss of students, be, and is hereby, affirmed.

This 8th day of December, 1977.

Thomas K. Vann, Jr.

THOMAS K. VANN, JR.
Vice Chairman for Appeals

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ROBERT P. EVANS, Appellant, vs. JEFFERSON CITY BOARD OF EDUCATION, Appellee.	:	CASE NO. 1977-16 REPORT OF HEARING OFFICER

PART I

SUMMARY OF APPEAL

The Jefferson City Board of Education, hereinafter referred to as "Local Board", held a hearing on July 11, 1977 and after the hearing voted not to renew the contract of Robert P. Evans, hereinafter "Appellant", as an industrial arts teacher. The reason given for the nonrenewal was because of a reduction in staff due to loss of students and cancellation of programs. The appeal asserts that the decision of the Local Board cannot stand because it was arrived at in a closed meeting after Appellant requested that the hearing be open to the public. Additionally, the appeal asserts that the evidence presented did not establish a loss of students and cancellation of programs and was therefore insufficient to uphold the nonrenewal.

PART II

FINDINGS OF FACT

The Superintendent notified Appellant on April 1, 1977, of his initial decision to recommend that Appellant not be hired for the school year 1977-78. On April 4, 1977, Appellant requested a hearing and a list of the charges against him. The listing of charges and the witnesses to be heard for the Local Board was given to Appellant on April 29, 1977.

When the hearing began, Appellant's counsel requested that the hearing be open to the public, but this request was denied by the Local Board on the ground that it involved personnel matters. The Local Board argues that the Appellant did not insist on an open meeting. When asked by the Vice-Chairman of the Local Board whether he wanted an open meeting, counsel for Appellant responded, "We would just as soon it be open. . . ."

The Vice-Chairman then mentioned that they could go into executive session, to which Appellant's counsel responded, "We would prefer the meeting to be open . . . and we would waive any of our rights under the Sunshine Law and I really think . . . it relates to the person whose matters are concerned; in this case, Mr.

Evans. For that reason, we think the meeting ought to be open."

The Local Board argues that this colloquy did not constitute a motion for an open hearing, nor was there a specific objection to an executive session. Additionally, there was no showing of any harm that resulted from having a closed hearing.

At the conclusion of the hearing, the Local Board made findings of fact and conclusions of law. The Local Board found that there were two teachers teaching the industrial arts courses at Jefferson High School, and that the number of students actually taking industrial arts was insufficient to justify, according to State standards, two industrial arts teachers. The Local Board further found that it was necessary to assign courses to Appellant outside his major field and in a field in which he did not hold a certificate. The Local Board also found that the pre-registration of students for the academic year 1977-78 indicated that there would be an insufficient number of students to justify two industrial arts teachers.

Appellant argues that the evidence did not support the finding that there was a decrease in the number of students. This argument is based on the fact

that the pre-registration for the 1977-78 school year did not begin until March, 1977 and was not completed until April 15, 1977. The record discloses that the Superintendent talked with the football coach in January, 1977, and told him that he should begin looking for another assistant coach because Appellant probably would not be hired for the coming year. Additionally, Appellant was given his initial notice on April 1, 1977, which was before the pre-registration closed. From these facts, Appellant argues that the decision not to renew Appellant's contract was unrelated to any decrease in the number of pupils since the Superintendent did not know how many pupils would be enrolled in the class for the 1977-78 school year.

There does not appear to be any substantial dispute between the parties that the events complained of by Appellant occurred as alleged. The difference exists in how the continuing enrollment in the industrial arts courses is viewed. There were only 145 pupils registered for the industrial arts classes during the year 1976-77. The number actually taking the class at the time the notice was given to Appellant had dropped from the original 145 students to approximately 128 students. There was, therefore, evidence available to the Local Board from

which it could conclude that the number of students actually enrolled in the industrial arts program did not warrant two teachers. As the Local Board states in its brief, a school system cannot afford the luxury of having an excess number of teachers. The Superintendent made a decision as to which teacher's contract was not to be renewed and Appellant was given a full and complete hearing before the Local Board.

PART III

CONCLUSIONS OF LAW

A local board of education can terminate a teacher for reduction in staff due to loss of students or cancellation of programs. Ga. Code Ann. § 32-2101c(a). The Local Board, therefore, had the power and authority not to renew Appellant's contract. The Local Board also gave Appellant the statutorily required notices on a timely basis. The evidence contained in the record establishes that the decision of the Local Board was not arbitrary and capricious.

There remains the question of whether the decision of the Local Board is null and void because of Appellant's initial request that the hearing be open to the public. Ga. Code Ann. § 40-3301 provides that:

> "All meetings of any . . . board of education . . . at which official actions are to be taken are hereby declared to be public meetings and shall be open to the public at all times. No resolution, rule, regulation or formal action shall be binding except as taken or made at such meetings."

Two exceptions to this policy are contained in subpart (f) of Ga. Code Ann. § 40-3302, which provides:

> "The provisions of this Chapter shall not apply to the following:
>
> * * * *
>
> "(f) Meetings when:
>
> (1) any agency or other unit is discussing the appointment, employment, disciplinary action or dismissal of a public officer or employee, or
>
> (2) any agency or other unit is hearing complaints or charges brought against a public officer or employee, unless he requests a public meeting."

Appellant argues that since he requested a public hearing, the provisions of Ga. Code Ann. § 40-3301 are applicable, i.e., the hearing had to be open to the public by virtue of this request and the exception to the second exception contained in Ga. Code Ann. § 40-3302(f)(2). In order, however, "for a party successfully to complain of a ruling which he contends to have been a denial of . . . [a public meeting] he must be able to show a formal and proper motion in the record as the basis of the asserted error, and this rule is technically construed." Williams v. Mayor, 118 Ga.

App. 271, 273 (1968). In order for Appellant to now insist on the open hearing provision of Ga. Code Ann. § 40-3301, it was necessary for him to have made a formal motion for an open hearing and then to object to the ruling of the Local Board. Since Appellant did not make a formal motion for a public hearing, the Local Board did not error in holding a closed hearing.

PART IV

RECOMMENDATION

Based upon the above findings and conclusions, the record, and the briefs and oral arguments of counsel, the Hearing Officer is of the opinion that the Jefferson City Board of Education had the power and authority to make the decision not to renew Appellant's contract, that the decision was not arbitrary and capricious, and was made in full compliance with the law. The Hearing Officer, therefore, recommends that the decision of the Jefferson City Board of Education be affirmed.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer