

Consequently, the school system does not earn any full-time equivalent (FTE) credits for a student who only attends the night school program.¹

The Local Board held that O.C.G.A. § 20-2-212 was inapplicable to night school teachers, and that Appellant had waived any right to be paid in accordance with her regular salary schedule. Appellant then filed a timely appeal to the State Board of Education.

O.C.G.A. § 20-2-212(a) provides, in part:

A local unit of administration shall not pay to any full-time certificated professional employee a salary less than that prescribed by the schedule of minimum salaries, nor shall a local unit of administration pay to any part-time certificated professional employee less than a pro-rata portion of the respective salary prescribed by the schedule of minimum salaries.

O.C.G.A. § 20-2-212(a) (Michie, 1996).

Appellant claims that the above-quoted language of O.C.G.A. § 20-2-212 required the Local Board to pay her an hourly rate for her night program teaching equal to the rate she received for her regular teaching position. Appellant argues that O.C.G.A. § 20-2-212 is applicable because the students attending the night school program receive Carnegie Units for the classes they take. In addition, Appellant claims that the students attending the night school program earn FTE credits for the school system so that state funds could be used for the night school program.

The Local Board argues that O.C.G.A. § 20-2-212 is not applicable because state funds are not received for the night school program; the night school program is locally funded in its entirety. The Local Board argues that when state-mandated minimum salaries are required, the statutes specifically provide for such minimum salaries, e.g., O.C.G.A. §20-2-182(e), which requires that the pay for extended day sessions shall be no less than the minimum 190-day salary schedule established by the State Board of Education, and O.C.G.A. § 20-2-168(d), which allows local units to establish summer school education programs and requires that teachers be paid at least the minimum State-mandated salary. Conversely, O.C.G.A. § 20-2-150(a), which permits local boards to operate alternative programs for students, does not provide for State funding and does not contain a minimum salary requirement. The essence of the Local Board's argument is that minimum salary requirements attach only to those programs where the State provides funding, and if the State does not provide funding, then minimum salary requirements do not exist. We agree with the Local Board.

O.C.G.A. § 20-2-212 is specifically addressed to salary schedules for a ten-month schedule, i.e., a regular educational program. The first sentence of O.C.G.A. § 20-2-212(a) provides:

¹ The State uses full time equivalent units as part of a formula for determining how much a local unit of administration will receive from the State for its various instructional programs. *See*, O.C.G.A. § 20-2-160 *et seq.*

The State Board of Education shall establish a schedule of minimum salaries for services rendered which shall be on a ten-month basis and which shall be paid by local units of administration to the various classifications of professional personnel required to be certificated by the Professional Standards Commission.

O.C.G.A. § 20-2-212(a) (Michie, 1996). O.C.G.A. § 20-2-212 cannot be read as having universal application to all programs provided by a local system. Such a reading would negate the need for the Legislature to provide how teachers are to be paid in the summer school program, O.C.G.A. § 20-2-168(d), or in the extended day program, O.C.G.A. § 20-2-182(e). O.C.G.A. § 20-2-212 must, therefore, be restricted to how teachers in the regular education program are paid.

This interpretation gives full effect to each of the Legislature's pronouncements on how teachers are to be paid. It also follows the scheme of funding educational programs. Local boards of education are provided State funds for the regular education program, the summer school program, and the extended day program. The receipt of State funds carries conditions that govern how teachers are to be paid.

The night school program created by the Local Board in this instance, however, is not funded by the State and O.C.G.A. § 20-2-150(a), which indirectly authorizes night school programs, does not contain any conditions that govern how teachers are to be paid. Since the Legislature is deemed to enact laws with due regard to all other laws in existence, the absence of any requirement to pay teachers in a certain manner in the night school program must be deemed to be deliberate and leaves local systems free to pay any salaries necessary to attract the teachers they want for the night school program.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board was not required to pay Appellant for her night school duties at the same rate she received for her regular teaching duties. The Local Board's decision, therefore, is SUSTAINED.

This 8th day of January, 1998.

Larry Thompson
Vice Chairman for Appeals