STATE BOARD OF EDUCATION

STATE OF GEORGIA

KELLY F. DOUGHERTY,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 1999-31**
	:	
DOUGLAS COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

Appellant claims that the record does not contain any credible evidence that he received actual notice of the charges against him and the date and time of the hearing on the charges. The Local Board argues that Appellant never raised this issue before the Local Board and cannot raise it for the first time on appeal.

O.C.G.A. § 20-2-940(c) provides that notices "shall be served by certified mail" and "[s]ervice shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last known address of the addressee with sufficient postage affixed to the envelope." The Local Superintendent testified that on April 22, 1999 he sent a notice by certified mail to Appellant's last known address of the charges and the date and time of the hearing. There was also hearsay testimony that a copy of the notice was personally delivered to Appellant by his principal and notice was also sent to Appellant by regular mail.

Citing *McGhee v. Yamaha Motor Manufacturing Corp.,* 214 Ga. App. 473 (1994) and *Finch v. Caldwell*, 155 Ga. App. 813 (1980), Appellant claims that the hearsay evidence cannot establish that he received notice of the hearing. There was, however, the direct testimony of the Local Superintendent that he mailed the certified notice to Appellant. Such evidence is sufficient to support the Local Board's decision that notice was properly given.

Appellant claims that the presumption that notice was received is rebuttable by evidence of non-receipt. In *James S. v. Rome City Bd. of Educ.*, Case No. 1993-48 (Ga. SBE, Mar. 10, 1994), a tribunal held a hearing without the student being present. The State Board of Education reversed the local board's decision on the grounds there was sufficient evidence to show that the student had not received notice of the hearing because the notice was not sent to the student's guardian. In the instant case, however, the Local Superintendent mailed the notice to Appellant's last known address and there is no evidence that the address was improper. The State Board of Education, therefore, concludes that the Local Board gave proper notice of the hearing.

The evidence shows that the Local Board decided during the 1997-1998 school year to eliminate the electronics program at the end of the 1998-1999 school year because of declining enrollment, safety concerns, and the ability to provide better instruction through a cooperative agreement with a vocational school. This decision was never challenged although Appellant was aware of the decision. Under O.C.G.A. § 20-2-940, a teacher can be released if a program is eliminated. The State Board of Education, therefore, concludes that the Local Board had the authority not to renew Appellant's contract.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant was given proper notice of a hearing and that the Local Board had the authority not to renew Appellant's contract. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of September 1999.

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Bruce Jackson
Vice Chairman for Appeals