

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JONAH MCCLUSTER,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-11
	:	
WEBSTER COUNTY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Jonah McCluster (Appellant) from a decision by the Webster County Board of Education (Local Board) to terminate his teaching contract due to a reduction in force because of a loss of state funds and the need to balance the school budget. Appellant claims that his contract is not subject to termination because it was not completed. Additionally, he claims that he was denied due process during the hearing because he was not allowed to ask questions about other teachers and paraprofessionals who had less time with the school system than he had with the school system. The Local Board's decision is sustained.

Following the renewal of teaching contracts for the 2005-2006 school year, the Local Superintendent learned that state funding for the county was to be reduced by \$96,949 for the 2005-2006 school year. The reduction meant that programs had to be reduced or a tax increase would be necessary. The Local Superintendent reviewed several options and decided to eliminate two programs, the band program and the vocational agriculture program, because they were not core academic programs. As a result, the Local Superintendent recommended the elimination of Appellant's position as the only teacher in the vocational agriculture program. The Local Board conducted a hearing and agreed with the Local Superintendent's recommendation to terminate Appellant's contract.

During the hearing before the Local Board, Appellant's contract was introduced along with an addendum. The addendum, which did not have a date filled in on it, had language that stated that Appellant's compensation "is conditioned upon availability of State funds under appropriations acts, as well as all amendments according to increases or decreases in State funding from the level provided for at the time this addendum is signed." Appellant argues that since the addendum was not completed by inserting a date on it, the availability of funds condition was not applicable to his contract and his contract, therefore, could not be terminated. Appellant's argument fails for two reasons. First, the condition is applicable only to Appellant's compensation and not to the validity of the contract. Secondly, Georgia law, specifically O.C.G.A. § 20-2-940(a)(6), provides

that an employee's contract can be terminated due to the cancellation of a program. Regardless of the addendum's provisions, the contract itself was made subject to the laws of the State and could thus be terminated because of the loss of a program.

Appellant also argues that he was denied due process because the hearing officer refused to allow him to ask questions designed to show that he was not being given any advantage over other teachers or paraprofessionals. Appellant's argument rests on his contention that he has "tenure," which gives him some priority over teachers who have not been employed as long as he has been employed. Appellant's argument, however, rests on the false assumption that Georgia law provides teachers with tenure. Georgia law does not provide for teacher tenure. *See, Applewhite v. Turner Cnty. Bd. of Educ.*, Case No. 1997-29 (Ga. SBE, Nov. 13, 1997); *Jones v. Gilmer Cnty. Bd. of Educ.*, Case No. 1991-33 (Ga. SBE, Mar. 12, 1992). Under the Fair Dismissal Law, O.C.G.A. § 20-2-940 *et seq.*, all teachers have the right to a hearing before their contracts can be terminated and teachers who have accepted the fourth or subsequent consecutive contracts cannot be non-renewed without cause. These rights, however, do not establish any priority over any other teacher or employee and do not create any entitlement to employment if cause for termination or non-renewal is shown. The State Board of Education, therefore, concludes that it was not error for the hearing officer to limit Appellant from trying to establish whether he should have had some advantage over other employees.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision to terminate Appellant's teaching contract because of a reduction in force. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of October 2005.

Wanda T. Barrs
Chair, State Board of Education