

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JENNY BETH PEDDLE,)
Appellant,)
v.) CASE NO. 1985-31
COBB COUNTY BOARD OF EDUCATION,)
Appellee.)

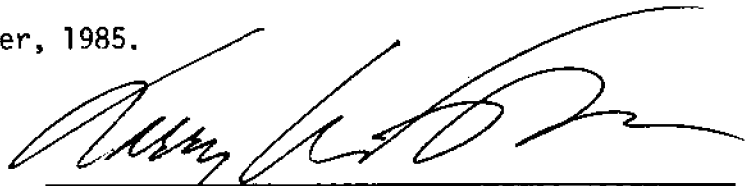
O R D E R

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 Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the Cobb County Board of Education herein appealed from is hereby REVERSED.

This 14th day of November, 1985.



LARRY A. FOSTER, SR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION

STATE OF GEORGIA

JENNY BETH PEDDLE,)
)
 Appellant,) CASE NO. 1985-31
)
 v.)
)
 COBB COUNTY BOARD)
 OF EDUCATION,)
) RECOMMENDATION OF
 Appellee.) STATE HEARING OFFICER

PART I

SUMMARY OF APPEAL

This is an appeal by Jenny Beth Peddle (hereinafter "Appellant") from a decision of the Cobb County Board of Education (hereinafter "Local Board") denying Appellant's motion to dismiss her nonrenewal. The motion to dismiss her nonrenewal was made based upon the fact that the Local Board failed to meet the fourteen (14) day timeline required by O.C.G.A. §20-2-942(b)(2). The Local Board determined that the fourteen day timeline is directory and not mandatory and, since there was no prejudice shown by Appellant due to the delay, the notice provided was valid. Appellant contends on appeal the Local Board's decision is contrary to the State Board of Education's decision in Byrd v. Taylor Cnty. Bd. of Ed., Case No. 1983-24, and that Appellant's due process and equal protection rights were violated and, therefore, the decision of the Local Board should be reversed. The State Hearing Officer recommends the decision of the Local Board be reversed.

PART II

FACTUAL BACKGROUND

Appellant taught for the Local Board for the 1984-85 school year. On April 5, 1985, the Local Board sent Appellant notice, by certified mail and regular mail, that her contract would not be renewed for the 1985-86 school year. Appellant, by certified letter dated April 19, 1985, asked for the reasons for her non-renewal, a list of the witnesses with summaries of their expected testimonies, and a hearing. Appellant's certified letter was received in the Local Board's mail room on April 23, 1985 and delivered to the Local Superintendent's office on April 24, 1985. The Local Superintendent did not respond to Appellant's request until June 3, 1985.

The Local Board requested that the Professional Practices Commission set up a tribunal to provide Appellant a hearing and make recommendations back to the Local Board. The Professional Practices Commission convened a tribunal on July 1, 1985, at which time the Local Board attorney moved to dismiss Appellant's request for a hearing as being untimely filed and Appellant moved to dismiss the nonrenewal based upon the Local Board's lack of a timely response to Appellant's request of April 19, 1985. The hearing officer for the tribunal ruled Appellant's request for a hearing was timely but that the Local Board's response to Appellant's request of April 19, 1985 was not timely and granted Appellant's motion to dismiss the nonrenewal. The hearing officer concluded that, even though he did not agree

with the State Board of Education's decision in Byrd, supra, he was bound to follow the decision. The Local Board of Education rejected the hearing officer's decision and issued its own decision on July 25, 1985, finding that the fourteen (14) day requirement of O.C.G.A. §20-2-942(b)(2) is directory and not mandatory and, since there was no prejudice shown by Appellant as a result of receiving the detailed information required by O.C.G.A. §20-2-940(b) after the fourteen day period, the notice was valid. Appellant filed this appeal by letter of August 9, 1985.

PART III

DISCUSSION

The issue in this case revolves around the requirement in O.C.G.A. §20-2-942 that a tenured¹ teacher who has been notified her contract is not being renewed must be given written notice of the charges against her within fourteen days of her timely request for such notice.

In Byrd, the State Board of Education had the opportunity to consider precisely the same issue. In that case, the teacher made a timely request for the required notice and the Local Board of Education failed to respond to that request until over

¹ After a specified period of employment, O.C.G.A. §20-2-942 grants teachers certain rights which are commonly called "tenure" rights, even though the statute does not use the term "tenure."

thirty days after the request was made. The State Board of Education accepted the recommendation of the hearing officer that the Local Board's decision not to renew the teacher should be reversed for failure to comply with the fourteen day requirement.

Appellant contends that the decision of the State Board of Education in Byrd should again be followed in this case. She contends that the Local Board failed to respond to her request until some 45 days after her request and that, as Byrd states, O.C.G.A. §20-2-942 requires compliance with the fourteen day timelines and, when that timeline is not followed, the Local Board's decision nonrenewing a teacher should be reversed.

The Local Board contends that the fourteen day requirement is directory only and, thus, the decision in Byrd should not be followed.

The Local Board bases its argument on the provisions in O.C.G.A. §1-3-1(c) and the case law in O'Neal v. Spencer, 203 Ga. 588 (1948) and Collins v. Nix, 125 Ga. App. 520 (1972). O.C.G.A. §1-3-1(c) provides:

...a substantial compliance with any statutory requirement, especially on the part of public officers, shall be deemed and held sufficient, and no proceeding shall be declared void for want of such compliance, unless expressly so provided by law.

O'Neal v. Spencer, was a quo warranto proceeding to inquire into the rights of Spencer to hold office as a member of a local board of education. Spencer was appointed three days

prior to the time allowed by statute and the individuals bringing the proceeding complained that the appointment was therefore invalid. The court relied on Hopkins v. Beasley, 11 Ga. App. 273 (1912) and held in O'Neal that the provisions as to the time for appointment of the officer was directory and where no injury appeared to have resulted, the fact that Spencer was appointed three days early would not render the appointment invalid. Collins, supra, also dealt with the appointment of board members, but this time the case involved a hospital board of directors. In that case, the court held that failure of a hospital authority to adopt a resolution concerning the appointment of its board members in compliance with statutory requirements did not render the appointments void. There, also, no showing of injury resulted.

Prior to 1982, O.C.G.A. §20-2-942 provided that a teacher had the right to request reasons for nonrenewal by not later than May 1. However, no specific deadline was set for a local board to respond to such request. O.C.G.A. §20-2-942 was then changed to provide that a teacher had fourteen (14) days to request the reasons and a local board had fourteen (14) days to respond.

The legislature has indicated an intent to provide teachers the benefit of knowing at an early point in time when their contracts would not be renewed. O.C.G.A. §20-2-941 and O.C.G.A. §20-2-290 both require notification of nonrenewal by April 15 of each year.

The fourteen day requirement in O.C.G.A. §20-2-942 provides a teacher with an opportunity to review the stated reasons and decide whether to contest the nonrenewal or seek other employment at an early point in time. Because a teacher is nonrenewed in April and is to receive notice within fourteen days of a request for notice, that teacher can make a decision by early May as to whether the teacher wants to pursue the matter to a hearing. With the fourteen day requirement in effect, at least the teacher will not be subjected to an indefinite delay.

The case law cited by the Local Board does not appear to warrant overruling Byrd. Both O'Neal and Collins, relied upon by the Local Board, deal with challenges to the appointment of members of boards. In O'Neal, the board member was actually appointed two days early, while in Collins, the local board failed to pass a proper resolution for the method of appointment in a timely manner. These cases are quite different from a failure to meet a notice requirement to a teacher who is expecting an early response due by statute. Additionally, O'Neal relied upon Horken v. Beasley, 11 Ga. App. 273 (1912). Horken was a case in which a judgment was granted to collect on a note and then that judgment was vacated. The judgment was vacated during a period of time when the court was supposed to be adjourned. It was argued that the order vacating the judgment was invalid because the judge had a statutory duty to adjourn th court. The Court of Appeals, in sustaining the validity of the judgment vacating the order, held that the

statute requiring adjournment was merely directory. There, the purpose of the requirement to adjourn court was for public convenience and especially the convenience of the officers of the court in completing minutes of the pending term and preparing for the business of the ensuing term. The court stated that the test of whether the time provisions are mandatory or directory is whether the prescribed mode of action is of the essence of the thing to be accomplished, whether it relates to matters material or immaterial to matters of convenience or substance. In the instant case, it is difficult to say that the fourteen day requirement is a matter of convenience or that it is immaterial. The notice provided to the teacher is a matter of substance and the time required for it to be provided is, itself, a valuable right. Thus, this case is distinguishable from cases which excuse a public official's failure to comply with timelines required by statute.

Additionally, it does not appear that the Local Board was in substantial compliance with the fourteen day requirement if substantial compliance was sufficient. The Local Board did not respond until June 8, 1985, some 45 days after it received the request. No reasons for any delay were given. While a failure to comply with the fourteen day requirement may be excusable in some situations, such as when a local board never actually receives the request, no such excuse has been provided in the instant case.

Although the Local Board argues that the statute is only directory when it is applied to a local board because the local board constitutes public officials, it also argues that the timelines are mandatory for a teacher, who is not a public official. The statute and the subsequent amendments, however, evidence an intent on the part of the legislature to bring about a speedy resolution to teacher nonrenewals. There does not appear to be any intent to establish a dual standard concerning the effects of failure to meet the established deadlines, regardless of the fact that public officials are involved and notwithstanding the provisions of O.C.G.A. §1-3-1(c). The legislature intended to grant teachers certain rights under the Fair Dismissal Law and the Local Board's approach operates to deny a teacher those rights and to obtain a speedy notice of the charges in support of a nonrenewal.

The Hearing Officer concludes that a local board is required to provide a teacher with the proper notice within the statutory fourteen (14) days after receiving a request for such charges. If a local board fails to provide the required notice within fourteen (14) days, then the nonrenewal (or failure to recommend renewal) is ineffective and a teacher's contract is considered to be renewed as if a notice of nonrenewal had not been issued prior to April 15.

PART IV
RECOMMENDATION

Based upon the foregoing discussion, the record presented, and the briefs and arguments of counsel, the State Hearing Officer is of the opinion the fourteen day requirement for a local board of education to give notice of the reasons for nonrenewal to a teacher is mandatory and not merely directory. Thus, the State Hearing Officer recommends the decision of the Local Board be

REVERSED.



L. O. BUCKLAND
STATE HEARING OFFICER