

STATE BOARD OF EDUCATION
STATE OF GEORGIA

FRANKLIN LYNN,	:	
	:	
Appellant,	:	
	:	CASE NO. 1997-41
vs.	:	
	:	DECISION
CITY OF ATLANTA	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Dr. Franklin Lynn (Appellant) from a decision by the City of Atlanta Board of Education (Local Board) not to renew his teaching contract for the 1997-1998 school year under the provisions of O.C.G.A. § 20-2-942(b) because of incompetence, willful neglect of duties, and other good and sufficient cause, as set forth in O.C.G.A. § 20-2-940(a)(1), (3), and (8). The Local Board's decision followed a tribunal's recommendation that Appellant's contract should be renewed. Appellant claims he was denied due process because he was not given a timely hearing. The Local Board's decision is sustained.

Appellant began teaching for the Local Board in 1970. Until 1986, he was a high school art teacher. Appellant then took an extended leave of absence for eight years and obtained his doctorate degree. When he returned to work, he was assigned as an art teacher at Inman Middle School for the 1996-1997 school year.

Beginning in October 1996, Appellant's principal and assistant principal noted that Appellant had difficulties in maintaining control in his classroom. During an evaluation made on November 25, 1996, Appellant received five "Needs Improvement" ratings. The principal required Appellant to develop a behavior management plan and placed him on a Professional Development Plan. On December 12, 1996, Appellant received three "Needs Improvement" ratings during another evaluation.

On November 25, 1996, in addition to the evaluation, Appellant pushed a student against a blackboard. Appellant admitted the incident and accepted a ten-day suspension without pay.

The assistant principal found students from Appellant's class in the halls without a pass on two different occasions. Appellant also refused to allow a tardy student to enter the classroom. During informal observations, the principal and assistant principal found students off task and Appellant's classes in general disarray.

On March 21, 1997, Appellant placed an unruly student in a paint storage room, which was adjacent to his classroom, and shut the door. The student stayed in the room for at least thirty minutes. Appellant then kept the student after school without first notifying the student's

parents that he would be kept after school. On March 27, 1997, Appellant was transferred to an administrative position. On March 31, 1997, Appellant's principal recommended termination of his contract. On April 4, 1997, the Local Superintendent notified Appellant in writing that a recommendation would be made to the Local Board not to renew Appellant's contract for the 1997-1998 school year. Appellant requested a hearing and a list of charges. The list of charges was provided to Appellant on April 28, 1997 and a hearing was initially scheduled for May 22, 1997.

The hearing was delayed upon motion of the parties until August 20, 1997. Following three days of hearing, a tribunal recommended renewal of Appellant's contract. The Local Board accepted the tribunal's findings of fact, but rejected the tribunal's recommendation and voted not to renew Appellant's contract. Appellant then appealed to the State Board of Education.

Appellant's main claim on appeal is that the Local Board denied him due process because it failed to hold a hearing when it transferred him out of the classroom to an administrative position. Appellant claims that O.C.G.A. § 20-2-940(g) requires a hearing within ten days after a transfer and the Local Board cannot convert the process into a non-renewal proceeding to avoid the strictures of O.C.G.A. § 20-2-940(g).

O.C.G.A. § 20-2-940(g) provides, in part:

The superintendent of a local school system may temporarily relieve from duty any teacher ...for any reason specified in subsection (a) [of Section 20-2-940], pending a hearing by the local board in those cases where the charges are of such seriousness or other circumstances exist which indicate that such teacher or employee could not be permitted to continue to perform his duties pending hearing without danger of disruption or other serious harm to the school, its mission, pupils, or personnel. ...Such action by the superintendent shall not extend for a period in excess of ten working days, and during such period it shall be the duty of the local board to conduct a hearing on the charges ...

O.C.G.A. § 20-2-940(g). In addition, O.C.G.A. § 20-2-943(b) provides:

Nothing in this part shall be construed as depriving local boards of education ...from assigning and reassigning teachers ...from one school to another or from assigning and reassigning teachers to teach different classes or subjects.

O.C.G.A. § 20-2-943(b).

In *Grigsby v. City of Atlanta Bd. of Educ.*, Case No. 1996-24 (Ga. SBE, Sep. 12, 1996), the State Board of Education held that a local board of education could not relieve a teacher from duty following an incident and hold a hearing concerning the incident more than ten days later under the pretext that the transfer was made under the provisions of O.C.G.A. § 20-2-943(b). On appeal to the superior court, the decision was upheld. *City of Atlanta Bd. of Educ. V. Grigsby*, Civil Action File No. E53247 (Fulton Sup. Ct., Apr. 2, 1997). In upholding the State Board of Education, the Court stated:

This Court interprets the Fair Dismissal Act as requiring adherence to OCGA 20-2-940(g) when a teacher is reassigned from classroom duty to administrative duty in the context of accusations of willful neglect and misconduct. This interpretation is further buttressed by the fact that although the Local Board argues that it was not required to

give Grigsby the notice and hearing within the ten-day requirement of OCGA 20-2-940(g), it did grant Grigsby a hearing and an appeal under the parameters specified in OCGA 20-2-940(e), though not within the ten-day time frame. Such action implicitly recognizes that the reassignment was a relief from duty subject to OCGA 20-2-940(g) because pure administrative reassignments under OCGA 20-2-943(b) carry no right to a hearing.

Appellant argues that since he was transferred after putting a student in a paint supply room, the Local Board was required to hold a hearing within ten days under the *Grigsby* decisions. The Local Board argues that the ten-day requirement is inapplicable because the hearing was about non-renewal of a contract and not about putting a student in an art supply room, even though the incident was another indicator of Appellant's inability to maintain control in his classroom. We agree with the Local Board and hold that a hearing within ten days was not required.

O.C.G.A. § 20-2-942(b) permits a local board not to renew a teacher's contract, or demote a teacher, for cause, as defined in O.C.G.A. § 20-2-940(a), which addresses termination or suspension. A non-renewal proceeding, therefore, is not the same as a termination or suspension proceeding, although the non-renewal requires the same causes as a termination or suspension proceeding. A non-renewal proceeding, however, has a different set of notice and time of hearing requirements. A non-renewal notice must be given to a teacher before April 15 and the teacher has 20 days in which to request a hearing. The Local Board then has 14 days to provide a list of charges and set a date for a hearing. O.C.G.A. § 20-2-942(b).

In the instant case, the Local Board held a hearing to consider the Local Superintendent's recommendation not to renew Appellant's contract based upon incidents that occurred throughout the 1996-1997 school year. In *Grigsby*, the teacher was suspended and a hearing was held more than ten days after the suspension. Both the hearing and the suspension arose from a single incident. The Local Board has vigorously contested that the *Grigsby* decision is erroneous. The Local Board has argued that it has to remove teachers from the classroom for the safety of the students, but it cannot complete an investigation and conduct a hearing within ten days. The Local Board continues with its policy of removing teachers from the classroom whenever a teacher is charged with improperly administering corporal punishment, which is what occurred in the instant case. In the instant case, however, the Local Board did not attempt to base its non-renewal on the incident that resulted in Appellant's removal from the classroom. Thus, even without the March 21, 1997 incident, there was sufficient cause for the Local Superintendent to recommend non-renewal of Appellant's teaching contract.

It appears that the intent of the Legislature in adopting O.C.G.A. § 20-2-940(g) was to provide a Local Superintendent with a mechanism for protecting students when an incident occurs of such a serious nature that it could result in termination or suspension without pay. Since the charge goes to the essence of teaching, i.e., whether a teacher can interact with students, and the resulting stigma attached to such a determination, the Legislature determined that ten days was a sufficient time to investigate the incident and provide the teacher with a hearing concerning the incident. The State Board of Education has interpreted the interrelationship of the various Fair Dismissal Act provisions to mean that a teacher cannot be transferred as a punitive action, *Wilner v. Fulton Cnty. Bd of Educ.*, Case No. 199 1-6 (Ga. SBE, Apr. 11, 1991), nor can a teacher be denied due process because a school system has encumbered itself with an untimely investigative process, *Grigsby, supra*. The State Board of Education has

not, however, ruled that every transfer requires a hearing, or that a non-renewal hearing has to occur within ten days.

In the instant case, the Local Superintendent elected to transfer Appellant because of the March 21, 1997 incident without taking any further action. Even if Appellant may have been entitled to a hearing because of the transfer, his entitlement does not convert the non-renewal hearing into a hearing regarding his transfer. Appellant did not ask for a hearing concerning his transfer and the Local Board did not grant him a hearing to address his transfer.¹ Instead, the hearing was conducted under the authority of O.C.G.A. § 20-2-942(b) to address the non-renewal of Appellant's contract.² There is no authority that required the Local Superintendent to seek Appellant's suspension or termination because of the March 21, 1997 incident.

Appellant argues that even if he was not terminated, the net effect of a non-renewal is the same and the ten-day hearing requirement of O.C.G.A. § 20-2-940(g) still applies. The net effect of any non-renewal action is the same as a termination action, but a different code section governs each proceeding. Thus, the similarity of the ultimate, long-term, result does not dictate the application of O.C.G.A. § 20-2-940(g). The State Board of Education concludes that the Local Board did not deny Appellant any of his due process rights by failing to conduct a hearing within ten days.

Appellant also claims that the Local Board erred in finding that the tribunal's findings constitutes sufficient evidence to find incompetence, willful neglect of duty, and other good and sufficient cause to justify contract non-renewal. In the instant case, the tribunal found that Appellant had not received any assistance from the administration and recommended renewal of his contract. A local board of education, however, is not required to accept the recommendation of a tribunal. *See, Rabon v. Bryan Cnty. Bd. of Educe.* 173 Ga. App. 507, 326 S.E.2d 577 (1985). A local board of education is bound by the findings of fact made by a hearing tribunal which are supported by the evidence contained in the record of the hearing, and a local board cannot go behind the hearing tribunal and make findings of fact which are inconsistent with the hearing tribunal's findings of fact. *See, Balthrop v. Bd. of Public Educe. for the City of Savannah and Cnty. of Chatham*, Case No. 1983-20 (Ga. SBE, Sep. 8, 1983).

In the instant case, the tribunal found that Appellant was not suited to teaching in the middle school, classroom management was a problem for Appellant, and that Appellant received eight "Needs Improvement" ratings in two observations. There was evidence presented to the tribunal that might indicate willful neglect of duty, but the tribunal failed to make any findings concerning Appellant's willful neglect of duty. The State Board of Education, therefore, concludes that there was evidence from which the Local Board could determine that Appellant was incompetent.

¹ If appellant wanted a hearing on his transfer, he had the right to file a mandamus action.

² Appellant requested a hearing regarding his contract renew and not his transfer.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board did not deny Appellant any due process rights by holding a non-renewal hearing later than ten days after he was transferred, and there was evidence to support the Local Board's decision that Appellant was incompetent. The Local Board's decision, therefore, is SUSTAINED.

This 12th of February, 1998.

Dr. Bill Grow was not present.

Larry Thompson
Vice Chairman for Appeals