STATE BOARD OF EDUCATION

STATE OF GEORGIA

DEE DEE BERGBREITER, **Appellant,** **vs.** **RABUN COUNTY BOARD OF EDUCATION,** **Appellee.**	:	**CASE NO. 2012-09** **DECISION**

This is an appeal by Dee Dee Bergbreiter (Appellant) from a decision by the Rabun County Board of Education (Local Board) not to grant her a hearing because she requested the hearing via electronic facsimile rather than by certified mail. Appellant argues that the request was admittedly filed in a timely manner and that the Local Board's position places form over substance. The Local Board's decision is sustained.

The Local Board had employed Appellant as a special education teacher for five years. On April 22, 2010, the Local Superintendent sent Appellant a notice that her teaching contract would not be renewed for the 2010-2011 school year. On May 3, 2010, Appellant's attorney requested a hearing by sending an electronic facsimile and a letter by regular mail to the Local Superintendent. The Local Superintendent received the facsimile. On May 14, 2010, the legal counsel for the Local Board informed Appellant's attorney that the Local Board would not provide Appellant with a hearing because the request for a hearing was not sent by certified mail.[1] The Local Board finally decided to grant Appellant a hearing under the provisions of O.C.G.A. § 20-2-1160 to determine whether Appellant should receive a hearing under the provisions of O.C.G.A. § 20-2-940. The hearing before the Local Board occurred on July 26, 2011.[2] At the conclusion of the hearing, the Local Board decided that Appellant would not be granted a hearing under the provisions of O.C.G.A. § 20-2-940 because the request for a hearing was improperly made.

The issue in this case is whether Georgia requires strict compliance or substantial compliance with a notice statute. O.C.G.A. § 20-2-942(b)(2) provides, in part, that after a teacher

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[1] It does not appear in the record that any attempt was made to contact Appellant to tell her that the request for a hearing was in an improper form until the Local Board's attorney contacted Appellant's attorney, which was 22 days after the Local Superintendent's letter was issued.

[2] There is nothing in the record to show why it took one year before the Local Board decided to consider Appellant's request.

receives a notice of nonrenewal, the teacher has a right to receive a notice of the charges against him or her and a right to a hearing on the charges, provided, however, that:

> "[a] teacher who has the right to these procedures [a notice of charges and a hearing] must serve written notice on the superintendent of the local board employing the teacher within 20 days of the day the notice of the intended action is served that he or she requests a hearing. In order to be effective, such written notice that the teacher requests implementation of such procedures must be served by certified mail or statutory overnight delivery as provided in subsection (c) of Code Section 20-2-940. Within 14 days of service of the request to implement the procedures, the local board must furnish the teacher a notice that complies with the requirements of subsection (b) of Code Section 20-2-9490."

O.C.G.A. § 20-2-940(b)(2)(2011)(emphasis added).

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

> "All notices required by this part relating to demotion, termination, nonrenewal of contract, or reprimand shall be served by certified mail or statutory overnight delivery. Service 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."

O.C.G.A. § 20-2-940(c)(2011).

The Local Board argues that there must be strict compliance with the statute and Appellant failed to provide a notice by certified mail. Appellant argues that substantial compliance is sufficient and there was substantial compliance because the Local Superintendent received notice within the 20-day period after Appellant received the notice of her pending nonrenewal. We believe Georgia law favors the Local Board's argument. *See, Williams v. Georgia Department of Human Resources,* 272 Ga. 624, 532 S.E.2d 401 (2000); *Dempsey v. The Board of Regents of the University System of Georgia,* 256 Ga. App. 291, 568 S.E.2d 154 (2002), *but see, Cummings v. Georgia Department of Juvenile Justice,* 282 Ga. 822, 653 S.E.2d 729 (2007).

While each of the cited cases addresses the notice provisions contained in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., (GTCA) the notice provisions are substantially the same, i.e., both require the notice to be in writing and mailed by certified mail or statutory overnight delivery. In *Williams*, a decedent's husband was denied relief on his wrongful death claim notwithstanding the fact that a claim for injury was properly filed before the decedent's death. The Court observed that the Court of Appeals "has consistently held that substantial compliance with the notice provisions is inadequate." 272 Ga. at 624, 532 S.E.2d at 402.

In *Dempsey*, a student was injured by a tree limb that fell on her after being cut by university employees. A university official told the student he would send in the proper notices to comply with the GTCA and he sent a timely notice of the incident. The Court rejected the

student's substantial compliance argument, stating that the claim was not personally filed by the student, was not based upon the student's "knowledge and belief", and did not state the "amount of the loss". 256 Ga. at 293, 568 S.E.2d at 156.

Arguably, such a harsh result is not called for under the Fair Dismissal Law, O.C.G.A. § 20-2-940 et seq. The GTCA constitutes a waiver of sovereign immunity, thus requiring strict construction. By it terms, the GTCA also denies jurisdiction to the courts if its terms are not complied with. Neither of these reasons exists in the Fair Dismissal Law. Additionally, the very essence of the Fair Dismissal Law is the opportunity for a teacher to have a hearing. Insisting upon strict compliance, when there has been substantial compliance and the school system is aware of the teacher's desire to have a hearing, denies the teacher of the essence of the Fair Dismissal Law. Nevertheless, because of the similarity in the notice provisions, we believe the courts would follow a strict compliance approach in interpreting O.C.G.A. § 20-2-942(b)(2).

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that the Local Board did not err in denying Appellant a hearing because she did not provide the proper notice to the Local Superintendent. Accordingly, the Local Board's decision is
SUSTAINED.

This _____ day of January 2012.

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Mary Sue Murray
Vice Chair for Appeals