STATE BOARD OF EDUCATION

STATE OF GEORGIA

RHONDA BROWNING	:	
	:	
Appellant,	:	
	:	**CASE NO. 1999-13**
vs.	:	
	:	**DECISION**
ATLANTA	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by Rhonda Browning (Appellant) from a decision by the Atlanta Board of Education (Local Board) not to renew her teaching contract because of insubordination, willful neglect of duties, and other good and sufficient cause under O. C. G. A. § 20-2-940. Appellant claims that her contract was automatically renewed by operation of law because the Local Board failed to provide her with a timely list of charges. Additionally claims that the evidence did not support the charges. The Local Board's decision is sustained.

Appellant served as a special education teacher of the severely intellectually impaired. At the beginning of the 1996-1997 school year, she transferred to the Martin Luther King, Jr. Middle School. Over the next two years, Appellant reacted negatively to the transfer and engaged in confrontational conduct with her principal. The principal found that Appellant failed to maintain a clean classroom and placed Appellant on a professional development plan to correct the deficiencies noted. In a conference to discuss the professional development plan, Appellant became irate to the point where the principal told her that she would be removed from the building if she did not calm down. During the conference, Appellant charged that the principal was discriminating against her because of her race and because she was overweight.

The confrontations between the Appellant and her principal continued during the 1997-1998 school year and extended to the new special education coordinator who was assigned to the school. Another confrontation occurred on January 5, 1998 when Appellant again became irate with the principal to the point where the principal had to end the conference.

On April 3, 1998, the Local Superintendent wrote to Appellant that he would not recommend renewal of her teaching contract for the 1998-1999 school year because of incompetency, willful neglect of duties, insubordination, and other good and sufficient causes under O. C. G. A. § 20-2-940. On April 7, 1998, Appellant sent a certified letter to the Local Superintendent and asked for a list of charges and a hearing. On May 6, 1998, Appellant's attorney called counsel for the School System to ask when a hearing would be held and for a list of charges. The School System counsel advised Appellant's attorney that the Local

Superintendent had not received a request for a hearing from the Appellant. The School System counsel also advised Appellant's attorney that is Appellant provided proof that she had sent a certified letter to the Local Superintendent, Appellant would be given a hearing. Although Appellant's attorney provided a copy of Appellant's letter, he was unable to provide proof of mailing until April 15, 1998. The receipt for the certified letter indicated that the Local Superintendent received it sometime in May.[1] On May 15, 1998, the attorneys agreed that O. C. G. A. § 20-2-940 (b) required the school system to provide a list of charges within 14 days after she requested a hearing. The Local Superintendent provided the list of charges on May 29, 1998.

Appellant filed a motion to dismiss the proceedings on the grounds she was not provided a list of charges within 14 days after she asked for a hearing. The hearing officer who was appointed to conduct the hearing for Appellant denied the motion to dismiss. It is this ruling that Appellant assigns as error on appeal.

O. C. G. A. § 20-2-942(b) provides that a teacher who has received a notice of non-renewal has twenty days to serve a written notice on the local superintendent, by certified mail, that he or she wants a hearing. "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 20-2-940." O. C. G. A. § 20-2-940, MICHIE (1998 suppl.). O. C. G. A. § 20-2-940(c) provides:

> (c) Services....All notices required by this part relating to... nonrenewal of contract.....shall be served by certified mail. Service shall be deemed to be perfected when the notice is deposited in the United States mail addressed to the last know address of the addressee with sufficient postage affixed to the envelope.

O. C. G. A. § 20-2-940(c), MICHIE (1998 suppl.) (emphasis added).

In *Byrd v. Taylor Cnty. Bd. of Educ.,* Case No. 1983-24 (SBE, Nov. 10, 1983), the State Board of Education adopted the position that if the list of charges is not made within 14 days, then the teacher's contract is deemed to be renewed. *Byrd* was followed by *Peddle v. Cobb Cnty. Bd. of Educ.,* Case No. 1985-31 (Ga. SBE, Nov. 14, 1985), where the State Board of Education held that a local board's failure to issue a notice of charges within 14 days resulted in the automatic renewal of a teacher's contract when the local board failed to issue a notice for forty-five days without any reason for the delay.

Appellant claims that since she mailed her request for a hearing on April 7, 1998, the request is deemed to have been served on the Local Superintendent on that date, April 7, by operation of O. C. G. A. § 20-2-940(c), thus obligating the Local Board to provide her a list of charges no later than April 21, 1998, as provided in O. C. G. A. § 20-2-942(b), regardless whether the Local Superintendent received her request for a hearing. Following *Peddle*, Appellant then argues that her contract was automatically renewed on April 15, 1998 because the Local Superintendent did not give her a list of charges until May 29, 1998.

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[1] Although the month is clear on the receipt, the actual date is unclear.

In denying the motion to dismiss, the hearing officer wrote that Appellant's reliance solely on the mailing date creates an unworkable situation.

> "[I]f [Appellant's] interpretation prevails, teachers who receive their first notice of a certified letter of nonrenewal more than twenty days after the Superintendent serves it would also be absolutely precluded from demanding a charge letter and hearing. Such a strict interpretation of the statute serves no legitimate purpose for either the teacher or Superintendent. Nor is there any authority which compels such a construction of the requirements of § 20-2-942(b) (2).
>
> Permitting consideration of actual 'receipt' of notices to govern under appropriate Limited circumstances does not undermine the 'mandatory' nature of the timelines set forth in § 20-2-942(b) (2)."

Hearing officer decision, p. 6-7. The hearing officer went on to point out that neither *Byrd* nor *Peddle* require opposite conclusion , and *Peddle* contemplated the situation that exists in the instant case in stating:

The Local Board did not respond June 8, 2998, 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 the local board never actually received the request, no such excuse has been provided in the instant case.

Peddle at p. 7

The State Board of Education agrees with hearing officer's decision. In both *Byrd* and *Peddle,* the local boards failed to provide the teacher with a notice of charges with a notice of charges without any reason. In the instant case, the Local Board's inaction occurred because it had not received the request from Appellant. Appellant argues that the Local Board should have sent out the notice even though it had not received a request for a hearing. O. C. G. A.§ 20-2-942 does not provide for such action, nor does it appear to contemplate that local boards have to guess whether a teacher wants a hearing. Additionally, local boards of education should not suffer any consequences when their failure to act results from the action or inaction of a third party. The State Board of Education, therefore, concludes that the hearing officer properly denied Appellant's motion to dismiss.

Appellant next claims that the evidence fails to support the tribunal's findings that she was insubordinate, willfully neglected her duties and that other good and sufficient causes existed not to renew her contract. "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. See, *Ransum v. Chattooga County Bd. of Educ.,* 144 Ga. App. 783, 242 S. E. 2d 374 (1978); *Antone v. Greene County Bd. of Educ.,* Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty Bd. of Educ.,* Case No. 1991-14 (Ga. SBE, Aug. 8, 1991).

There was evidence that Appellant (1) failed to maintain her classroom in a clean condition as directed by her principal, (2) refused to accept the principal's authority over her, (3) yelled at her principal, and (4) otherwise engaged in unprofessional conduct towards her principal and other personnel. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision.

Based on the foregoing, it is the opinion of the State Board of Education that Appellant's motion to dismiss was properly denied and that there was evidence to support the Local Board's decision that Appellant was insubordinate, willfully neglected her duties, and other good and sufficient cause existed not to renew her contract. Accordingly, the Local Board's decision is SUSTAINED.

This 13th day of May 1999.

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Willou Smith
Chairperson