

STATE BOARD OF EDUCATION

STATE OF GEORGIA

GLENN DOWELL,	:	
	:	
Appellant,	:	
	:	
vs.	:	CASE NO. 2006-76
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	
Appellee.	:	DECISION

This is an appeal by Glenn Dowell (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to deny him a hearing under the provisions of O.C.G.A. § 20-2-940 following his contract termination by the Local Superintendent. The Local Board made its decision without giving Appellant an opportunity to present witnesses, cross-examine witnesses, or present any documentary evidence. The Local Board’s decision is reversed and the Local Board is directed to conduct a proper hearing under the provisions of O.C.G.A. § 20-2-1160, granting Appellant his procedural due process rights to present evidence and cross-examine any evidence presented by the Local Superintendent.

The Local Board employed Appellant in 1980 and he worked continuously until he received a termination letter from the Local Superintendent in October 2005. Appellant requested a hearing under the provisions of O.C.G.A. § 20-2-940, but the Local Superintendent informed him that he was not eligible to have a hearing. Appellant then requested a hearing before the Local Board under the provisions of O.C.G.A. § 20-2-1160 to determine whether he should receive a hearing under the provisions of O.C.G.A. § 20-2-940.¹

Instead of granting Appellant a hearing, the Local Board limited him to making a five-minute oral argument of his contentions. Appellant offered to present evidence of his status as a certificated employee under contract and thus due a hearing under the provisions of O.C.G.A. § 20-2-940, but the Local Board denied him the opportunity to present any evidence. After hearing the oral argument and without receiving any evidence, the Local Board decided that Appellant did not have a right to a hearing under O.C.G.A. § 20-2-940.

O.C.G.A. § 20-2-1160 provides that local

board[s] of education shall constitute a tribunal for hearing and determining any matter of local controversy in reference to the

¹ O.C.G.A. § 20-2-940 provides that an employee under contract for a definite term cannot be terminated without a hearing if one is requested by the employee.

construction or administration of the school law, with power to summon witnesses and take testimony if necessary....

The regulations adopted by the State Board of Education to govern hearings before local boards of education requires the local boards of education to provide for the issuance of subpoenas, the swearing of witnesses, and the cross-examination of witnesses. Rules and Regulations of the State of Georgia § 160-1-3-.04.

The “hearing” contemplated by both the statute and the regulations, therefore, involves the summoning and swearing of witnesses, the taking of testimony, the examination and cross-examination of witnesses, and the presentation of documentary evidence.

In the instant case, the Local Board failed to provide Appellant with a proper hearing. The proceeding, which the Local Board argues met the standard of a hearing, involved merely listening to the oral arguments of the attorneys and the review of briefs submitted by the parties. There were no stipulated facts or agreed-upon documents presented. The attorneys disagreed on certain critical facts, e.g., whether Appellant had a contract or was supposed to have a contract.² Consequently, the Local Board did not have any evidence upon which it could make any findings of fact, nor are there any facts for the State Board of Education to review. The Local Board’s decision, therefore, was arbitrary and capricious, without any foundation in law or fact, which resulted in the Local Board denying Appellant his due process rights.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board improperly held a hearing under the provisions of O.C.G.A. § 20-2-1160 and thus denied Appellant his due process rights to present evidence and cross-examine witnesses. Accordingly, the Local Board’s decision is reversed and this case is remanded back to the Local Board to conduct a new hearing at which Appellant can present evidence and examine and cross-examine witnesses.

This _____ day of October 2006.

Wanda T. Barrs
Chair, State Board of Education

² Appellant attached to his brief copies of numerous contracts with the Local Board that he had signed and which required him to have a certificate, but none of these contracts were authenticated or appear to have been before the Local Board. They, however, do indicate that there are facts that may qualify Appellant to have a hearing under the provisions of O.C.G.A. § 20-2-940 and Appellant should have an opportunity to present those facts.

SUMMARY

This is an appeal by Glenn Dowell (Appellant) from a decision by the Atlanta City Board of Education (Local Board) to deny him a hearing under the provisions of O.C.G.A. § 20-2-940 following his contract termination by the Local Superintendent. The Local Board made its decision without giving Appellant an opportunity to present witnesses, cross-examine witnesses, or present any documentary evidence. The Local Board's decision is reversed and the Local Board is directed to conduct a proper hearing under the provisions of O.C.G.A. § 20-2-1160, granting Appellant his procedural due process rights to present evidence and cross-examine any evidence presented by the Local Superintendent.