

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>BERTHA TOWNSEND,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2007-14</b>
	:	
<b>ATLANTA CITY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Bertha Townsend (Appellant) from a decision by the Atlanta City Board of Education (Local Board) not to renew her contract as a counselor for the 2006-2007 school year. Appellant claims that the Local Board’s decision should be set aside because the tribunal that heard her case and the Local Board did not make timely decisions. The Local Board’s decision is sustained.

The Local Board employed Appellant as a counselor. On February 21, 2006, the Local Superintendent sent Appellant a notice of non-renewal. A notice of charges was issued on March 28, 2006. The Local Superintendent charged Appellant with incompetence, insubordination, willful neglect of duties, and other good and sufficient cause based upon her failure to be punctual and unprofessional conduct. A hearing tribunal heard the charges over three days, concluding on May 22, 2006. At the conclusion of the hearing, the parties waived the rules contained in O.C.G.A. § 20-2-940(f) that require a tribunal to issue findings of fact and recommendations within five days of the conclusion of the hearing and the local board to issue its decision within ten days after receipt of the transcript.

The tribunal issued its findings of fact and recommendations on July 14, 2006. The final transcript was delivered to the Local Board on June 6, 2006, but the Local Board did not reach its decision not to renew Appellant’s contract until August 14, 2006. Appellant then filed an appeal to the State Board of Education.

The only issues raised on appeal by Appellant are the failure of the hearing tribunal to issue findings of fact and recommendations within five days after the conclusion of the hearing and the failure of the Local Board to issue its decision within ten days after receiving the transcript of the hearing and the recommendations of the

tribunal. Appellant, however, waived these claims when she agreed to waive the time limits contained in O.C.G.A. § 20-2-940(f).<sup>1</sup>

Appellant claims that the waivers should be construed as waivers only for a reasonable period. Appellant then claims that the times taken by the Local Board and the tribunal were unreasonable and the decision, therefore, should be reversed. In support of her argument, Appellant cites *Adair v. Adair*, 220 Ga. 852, 142 S.E.2d 251 (1965) where the Court held that a nine-year delay between a waiver of service of process and the filing of a lawsuit was unreasonable and, as a matter of law, amounted “to no waiver whatever.” 220 Ga. at 856, 142 S.E.2d at 254. Thus, while the concept of reasonableness can attach to a waiver, we are not prepared to hold that the times involved in the instant case were unreasonable, even though there is no explanation of why it took the tribunal 53 days to issue their findings of fact and recommendations and why the Local Board took 32 days after receipt of the recommendations to make its decision.

By including the five day and ten day time limits in O.C.G.A. § 20-2-940(f), the Legislature clearly expected speedy resolutions by local boards of education whenever a hearing was held regarding the dismissal of a teacher or other employee. The parties, however, are free to waive these time limits. There is a possibility that a local board of education could abuse an open-ended waiver and fail to issue a decision for an extended period in an effort to “wear down” an out-of-work teacher, thus perpetuating the evil the Legislature sought to avoid. Teachers, therefore, should not enter into such open-ended waivers, but, instead, should establish alternate time limits in the waiver to avoid the problem faced by Appellant in the instant case.

Based upon the foregoing, it is the opinion of the State Board of Education that Appellant waived the time limits set forth in O.C.G.A. § 20-2-940(f) and the Local Board’s decision not to renew Appellant’s contract was timely made. Accordingly, the Local Board’s decision is  
SUSTAINED.

This \_\_\_\_\_ day of December 2006.

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William Bradley Bryant  
Vice Chairman for Appeal

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<sup>1</sup> The attorney who represented Appellant at the hearing, and who waived the time limits, was not the same attorney who represented Appellant on appeal.