

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

BRENDA KNOTT,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2011-21
	:	
DEKALB COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
Appellee.	:	

This is an appeal by Brenda Knott from a decision by the DeKalb County Board of Education (“Local Board”) non-renewing her employment contract for the 2010-2011 school year. On appeal, Appellant only challenges the decision of the Local Board on the grounds that she was not provided written notice of the basis for her non-renewal within fourteen (14) days after service of her request for a hearing, as required by O.C.G.A. § 20-2-942(b)(2) and O.C.G.A. § 20-2-940(c). For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. BACKGROUND

On April 23, 2010, the Local Board notified Appellant that her annual contract for the 2010-2011 school year was being recommended for non-renewal. On May 3, 2010, Appellant served a request for a hearing pursuant to O.C.G.A. § 20-2-942(b)(2). By letter dated May 17, 2010, the Local Board mailed Appellant the charge letter containing the reasons for the non-renewal of her contract. Appellant appealed the non-renewal recommendation of her employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. At the hearing, Appellant did not assert that she was not timely provided written notice of the charges within fourteen (14) days from the date she requested a hearing. After hearing the evidence, the Local Board non-renewed Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. ERRORS ASSERTED ON APPEAL

A. Failure to Raise Issue Below.

Appellant contends that the Local Board failed to deposit in the United States mail her written notice of the reasons for her non-renewal within fourteen (14) days, as required by O.C.G.A. § 20-2-942(b)(2) and O.C.G.A. § 20-2-940(c). The Local Board contends that Appellant did not assert an objection based upon the timeliness of the written notice before the

Local Board. Thus, the Local Board contends that this issue was not raised before the Local Board, and, therefore, cannot be raised on appeal to the State Board. See O.C.G.A. § 20-2-1160(e); Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983).

In reviewing the record, the State Board concludes that Appellant did not raise this issue below. Appellant does not dispute that she did not raise this issue below. Rather, Appellant contends that under Byrd v. Taylor County Bd. of Educ., Case No. 1983-24 (Ga. SBE, Nov. 1983) and Peddle v. Cobb County Bd. of Educ., Case No. 1985-31 (Ga. SBE, Nov. 1985) that O.C.G.A. § 20-2-942(b)(2) is mandatory. However, the mandatory requirement provided for in O.C.G.A. § 20-2-942(b)(2) does not relieve Appellant from her duty to timely raise questions before the Local Board, nor this Board's duty to consider only questions considered by the Local Board. O.C.G.A. § 20-2-1160(e).

Furthermore, in Walton v. Upson County Bd. of Educ., Case No. 1985-13 (Ga. SBE, Oct. 1985) this Board specifically addressed this issue. In Walton, the teacher also claimed that her written notice of charges was not mailed to her within fourteen (14) days after she appealed. This Board denied the appeal because the teacher did not raise the issue before the local board. Therefore, this Board concludes that Appellant cannot raise before this Board the question of whether the Local Board sent her written notice of the reasons for her non-renewal within fourteen (14) days after her letter requesting a hearing.¹

B. Reliance on Evidence Beyond the Record Below.

Even assuming Appellant raised this issue below, Appellant is relying upon evidence that was not part of the record below. Specifically, Appellant has attached as exhibits the certified mail records and the internet tracking information from the United States Postal Service's website. These records have not been authenticated and were not part of the record below. This Board is limited to review the record below. O.C.G.A. § 20-2-1160(e); Boney v. County Bd. of Ed. Of Telfair County, 203 Ga. 152, 153 (1947). Thus, Appellant cannot rely on evidence not part of the record below to support her appeal to this Board.

¹ During oral argument, Appellant asserted that under Atlanta Public Schools v. Diamond, 261 Ga. App. 641 (2003), this Board and the superior court can consider this issue even though it was not raised below because she has the right to assert such a contract claim in superior court. However, this Board disagrees. Diamond is very limited in its holding. In Diamond, the local board refused to send the written notice and hold the hearing as statutorily required. Thus, in Diamond, the Court of Appeals found that an appeal would have been futile since any appeal was confined to the record (which did not exist), and presupposed that a hearing (which was not held) was held. Thus, the holding in Diamond is narrowly limited to the situation in which the local board completely failed to provide written notice and a hearing, which triggers the Fair Dismissal Act.

C. Merits of Appellant's Contention.

Even assuming that Appellant had raised this issue below, and this Board considered the new evidence submitted by Appellant, the new evidence only shows that the May 17th letter arrived at the Stone Mountain postal office on May 21st. The Local Board is only required to deposit the letter in the United States mail within fourteen (14) days. O.C.G.A. § 20-2-940(c). Appellant's new evidence does not dispute that the Local Board deposited the written notice in the United States mail on May 17th. Thus, contrary to Appellant's assertion, the record does not show that the Local Board attorney inaccurately represented at the hearing that the written notice was mailed on May 17th. Moreover, if this issue had been timely raised below, the Local Board would have had the opportunity to provide testimony and evidence to show that the May 17th letter was deposited in the mail on May 17th. See Walton v. Upson County Bd. of Educ., Case No. 1985-13 (Ga. SBE, Oct. 1985). Therefore, even if this Board considered the new evidence provided by Appellant, this evidence does not show that the Local Board did not deposit the letter in the United States mail on May 17th, i.e., the date contained on the written notice. For the reasons set forth below, the State Board affirms the decision of the Local Board.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board and it is, therefore, **SUSTAINED**.

This _____ day of January 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS