



Ruling: Under the Fair Dismissal Act, Charter Schools Have Waived Employee Tenure

By Jill Hay, PAGE General Counsel & Director of Legal Services

Last summer, the Georgia Court of Appeals ruled [1] that Georgia charter school systems and charter schools have waived the Fair Dismissal Act, commonly referred to as “teacher tenure,” unless the system’s or school’s charter affirmatively incorporates the Fair Dismissal Act or allows FDA rules or policies. The ruling means that unless charter school systems and charter schools affirmatively state that they intend to extend tenure to employees, then tenure protections do not exist in the charter system or charter school.

Once a teacher has signed a fourth contract by the same employer, he or she enjoys a standing as tenure. Acquiring tenure rights simply means that one has a right to expect continuous employment in that school system. In other words, the school system must renew your contract year after year unless good cause to non-renew can be shown in a hearing that is afforded to the teacher under the Fair Dismissal Act.

THE RULING STANDS

The Court of Appeals case involved a Floyd County guidance counselor whose employment contract was non-renewed due to a Reduction in Force. The local school board voted in favor of Gilda Day’s non-renewal. Day objected, and the case wound through the State Board of Education, Superior Court and the Georgia Court of Appeals.

The ruling was not favorable to tenured teachers employed in charter systems or charter schools. The court held that under the Charter Schools Act, “systems are granted a

general waiver exempting them from most state statutory and regulatory schemes that apply to non-charter public schools under Title 20.” Day argued that teacher tenure is a vested property right and that due process is a civil right that could not be waived by charter systems and charter schools. The court disagreed.

Day appealed to the Georgia Supreme Court, and it has denied the Writ of Certiorari, in other words, the court has refused to hear her case. Therefore, the original decision of the local school board to non-renew Day’s contract was reinstated.

THE UPSHOT FOR EDUCATORS AND CHARTERS

PAGE is disappointed with this legal decision. Its implications are widespread given the large number of charter systems and charter schools in Georgia. It is important for educators in those systems or schools to understand that tenure is waived unless the charter affirmatively incorporates the Fair Dismissal Act or the local school board initiates policies to allow for employee fair dismissal. Appropriately, tenure does not prevent school districts from dismissing poorly performing employees, but it does protect employees who may be unfairly treated.

In the wake of the Day decision, PAGE hopes that charter school districts will amend their charter contracts to affirmatively add tenure protections for their valued employees. ■

[1] Day v. Floyd County Board of Education, 333 Ga. App. 144 (2015)

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