

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>MICHAEL C. HICKERSON,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2003-18</b>
	:	
<b>GRADY COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Michael C. Hickerson (Appellant) from a decision by the Grady County Board of Education (Local Board) to terminate his contract as the Grady County superintendent. Appellant claims that the Local Board denied him due process, was biased, and the Local Board’s decision was arbitrary and capricious because there was no evidence to support the decision. The appeal is dismissed because the State Board of Education lacks jurisdiction to consider the issues raised.

On February 1, 1998, the Local Board initially employed Appellant as superintendent for three years.<sup>1</sup> During the summer of 2000, the chairperson of the then Local Board was defeated at the polls, which caused a shift in the political dynamics of the Local Board. On September 12, 2000, the lame duck chairman of the Local Board presented a new contract for the superintendent, although the new contract was not on the agenda and had not been seen by all of the members of the Local Board. By a 3-2 vote, the new contract, which was for a term from January 1, 2001 through December 31, 2003, was approved. Upon its approval, the present chairman of the Local Board expressed a desire to terminate the superintendent’s employment as soon as possible after January 1, 2001 because he felt the new contract was improperly presented and contained provisions especially favorable to the superintendent.

On February 8, 2001, the Local Board voted 3-2 to terminate Appellant’s contract for cause. A letter setting forth the reasons for discharge was mailed to Appellant on March 6, 2001. A provision of the superintendent’s employment contract permitted “either party ... [to] call upon the Georgia Professional Standards Commission to review the matter.” Appellant asked that the issues be heard by a panel of educators and a hearing was held on May 7, 2001.<sup>2</sup> The panel issued an opinion that the Local Board had not shown just cause for terminating the superintendent’s employment contract. Notwithstanding the panel’s decision, the Local Board refused to rescind its decision to terminate the contract. Appellant filed a mandamus action in

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<sup>1</sup> The contract had a provision that extended the contract an additional year for each year the superintendent received a satisfactory evaluation.

<sup>2</sup> The record does not show how this panel was selected. During oral arguments, counsel stated that it was not from the Georgia Professional Standards Commission.

superior court seeking a decision by the Local Board to either affirm or reverse the tribunal's decision. When the superior court granted the mandamus, the Local Board appealed to the Georgia Supreme Court, which upheld the superior court's decision and held that the parties had agreed to use the procedures of O.C.G.A. § 20-2-940 to control Appellant's termination. *Grady County Board of Education v. Hickerson*, 275 Ga. 580, 571 S.E.2d 391 (2002). The Local Board then voted to reject the tribunal's decision. Appellant then filed this appeal with the State Board of Education.

Appellant claims that the Local Board's decision was arbitrary and capricious because it was not supported by the evidence as found by the tribunal; that the Local Board denied him due process because the majority of the board members admitted they were biased against him and the Local Board's refusal to comply with O.C.G.A. § 20-2-940 was *ultra vires*, denied him due process, and was not a legitimate exercise of the Local Board's authority.

O.C.G.A. §20-2-101 provides:

(a) Superintendents of each school system shall be employed by the local board of education under written contracts for a term of not less than one year and not more than three years...

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(f) No substantive or procedural right regarding employment or termination of employment of a superintendent by a local school system shall be created by this Code section. Rather, the terms and conditions of employment of a school superintendent by a local school system shall be determined exclusively by the contract between those parties and may include, without being limited to, the conditions under and procedures by which that contract may be terminated prior to the end of the term of that contract.

O.C.G.A. §20-2-101.

Under the provisions of O.C.G.A. § 20-2-1160, local boards of education can act as a tribunal "for hearing and determining any matter of local controversy in reference to the construction or administration of the school law...." O.C.G.A. § 20-2-1160(a). In the absence of a controversy involving school law, the State Board of Education does not have jurisdiction to review a local board's decision. *See, Boney v. County Bd. of Educ. of Telfair County*, 203 Ga. 152, 45 S.E.2d 442 (1947).

A contract entered into under the provisions of O.C.G.A. § 20-2-101 between a superintendent and a local board of education does not involve the construction or administration of school law. *See, Servicemaster Mgt. Svc. Corp. v. Cherokee Cnty. Sch. Sys.*, 257 Ga. 60, 354 S.E.2d 424 (1987) (contract "indistinguishable from similar contracts in the general realm of commercial activity...."). Since O.C.G.A. §20-2-101 specifically states that there are no substantive or procedural rights regarding employment or termination, an employment contract between a school system and a superintendent is indistinguishable from similar contracts in the general realm of commercial activity and does not involve the construction or administration of school law. The State Board of Education, therefore, does not have subject matter jurisdiction to review the Local Board's decision in the instant case.

“... [T]he law has given the county board [of education] wide discretionary powers....[It is the] policy of the law to give to the local authorities as much power and responsibility as possible for the conduct of the public schools.... [T]he members of the county board [of education], being familiar with the local conditions and circumstances, are in a better position to adjust local matters to existing conditions than the State board, which is far removed.” *Boney* at 155.

Appellant claims that he has been denied due process because there was an agreement between the parties to follow the procedures set forth in O.C.G.A. § 20-2-940 and the Local Board failed to follow those procedures. Whether there was a denial of due process is a question the parties will have to submit to a trial court since the parties cannot, by agreement, confer jurisdiction on the State Board of Education when such jurisdiction is statutorily lacking. *See, Smith et al. v. Upshaw et al.*, 217 Ga. 703, 124 S.E.2d 751 (1962).<sup>3</sup>

All of Appellant’s arguments rest on the assumption that he has obtained some substantive rights, despite the language of O.C.G.A. §20-2-101(f) to the contrary, because there was an agreement to “generally follow” O.C.G.A. § 20-2-940 in the conduct of the hearing before the review panel. An agreement to follow O.C.G.A. § 20-2-940, however, does not imbue the contract with anything special that would not be found in any other commercial employment agreement, i.e., the methods or procedures to be followed in terminating the contract. The methods to be used, the scope of any agreements, the effect of an oral agreement on a written contract and whether an agreement on procedure alters the substantive provisions of the written agreement are all issues that the trial courts regularly decide; they do not present any unique issues that the State Board of Education is specially qualified to answer.

Based upon the foregoing, it is the opinion of the State Board of Education that it lacks jurisdiction to consider Appellant’s appeal because it does not involve the administration or construction of school law, but is, instead, a purely local administrative matter that is wholly within the province of the Local Board to decide in the exercise of its authority to manage the schools under its control. Accordingly, the appeal is hereby DISMISSED.

This \_\_\_\_ day of March 2003.

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Wanda Barrs  
Chairperson, State Board of Education

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<sup>3</sup> In *Grady County Bd. of Educ. V. Hickerson*, 275 Ga. 580, 571 S.E.2d 391 (2002), the Supreme Court held that there was evidence to support the trial court’s finding that the parties agreed to incorporate and use the procedures of O.C.G.A. § 20-2-940. The Court did not, however, address the issue of conferral of jurisdiction when none exists under any statute.