STATE BOARD OF EDUCATION

STATE OF GEORGIA

LATONIA MCDANIELS,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2006-39**
	:	
ATLANTA CITY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Latonia McDaniels (Appellant) from a decision by the Atlanta City Board of Education (Local Board) that she was not entitled to a hearing on its decision not to renew her teaching contract. The Local Board's decision is reversed.

O.C.G.A. § 20-2-942 provides that if a teacher accepts a school year contract for the fourth consecutive year, the teacher must be given a written notice of an intent not to renew the teacher's contract. O.C.G.A. § 20-2-942(b). In the year 2000, the Georgia legislature enacted an amendment to O.C.G.A. § 20-2-942 and added subsection (d), which provided:

> (d) A person who first becomes a teacher on or after July 1, 2000, shall not acquire any rights under this Code section and Code Section 20-2-941 to continued employment as a teacher. A teacher who had acquired any rights to continued employment with respect to any position under this section prior to July 1, 2000, shall retain such rights.

Ga. L. 2000, p. 618 (effective July 1, 2000). The law was amended again in 2003, effective July 1, 2004, to provide that any person hired after July 1, 2000, "shall acquire rights under this Code section to continued employment as a teacher...." Ga. L. 2003, p. 896.

On August 1, 2000, the Local Board hired Appellant as a school counselor and her contract had been renewed each year through her contract for the 2004-2005 school year; she had thus signed five contracts through the 2004-2005 school year. On February 17, 2005, the Local Superintendent sent Appellant a notice that her contract would not be renewed for the 2005-2006 school year. The notice did not inform her of any right to a hearing or provide her with any reasons why her contract would not be renewed.

Appellant asked for a hearing on the reasons why her contract would not be renewed, but the Local Superintendent told her that she did not have a right to a hearing because she had not signed four contracts after the law was changed on July 1, 2004. Appellant then asked for a hearing before the Local Board under the provisions of O.C.G.A. §20-2-1160 to interpret the provisions of O.C.G.A. § 20-2-942 and decide whether she had the right to notice and a hearing. The Local Board agreed with the Local Superintendent and held that Appellant did not have a right to notice and a hearing on why her contract would not be renewed. Appellant then filed a timely appeal to the State Board of Education.

O.C.G.A. § 20-2-942(b)(2) provides, in part:

> (2) In order to demote or fail to renew the contract of a teacher who accepts a school year contract for the fourth or subsequent consecutive school year from the same local board of education, the teacher must be given written notice of the intention to demote or not renew the contract of the teacher. Such notice shall be given by certified mail or statutory overnight deliver as provided in subsection (c) of Code Section 20-2-940.

O.C.G.A. § 20-2-942(b)(2) (2005).

Appellant claims that, since she has signed five contracts with the Local Board, she is entitled to receive the notice provided by O.C.G.A. § 20-2-942(b)(2) and a hearing required by O.C.G.A. § 20-2-940. The Local Board argues that since the law did not provide teachers hired after July 1, 2000, with any right to notice during the period July 1, 2000, through July 1, 2004, the contracts that Appellant signed through July 1, 2004, do not count in determining whether she is eligible to receive notice before her contract is not renewed. According to the Local Board, any teacher hired after July 1, 2000, and before July 1, 2004, will not be eligible to receive notice until after they sign their contracts for the 2008-2009 school year.[1] The Local Board argues that the 2004 amendment did not contain any language that would make it retroactive so teachers could count the four years between July 1, 2000, and July 1, 2004, in determining eligibility for notice and a hearing.

The Local Board's argument misconstrues the law regarding retroactive application of statutes. The law does not completely bar retroactive application. The courts have held that the test is whether any vested rights are involved; a statutory change cannot be retroactively applied to deny vested rights. *See, Spengler et al. v. Employers Commercial Union Insurance Co.,* 131 Ga. App.

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[1] According to the Local Board, the first contract that would count towards eligibility for notice would be the contract signed for the 2005-2006 school year (since the contracts for the 2004-2005 school year would have been signed before July 1, 2004), the second contract would be for the 2006-2007 school year, the third contract would be for the 2007-2008 school year, and the fourth contract would be for the 2008-2009 school year, which would normally be signed in the spring of 2008.

443, 450, 206 S.E.2d 693, 698 (1974). In the instant case, the 2003 amendment did not deny any vested rights, but, instead, granted the right to notice and a hearing to teachers without any expressed limitations. This does not constitute a retroactive application of the law.

O.C.G.A. § 20-2-942(b)(1) provides: "A teacher who accepts a school year contract for the fourth consecutive school year from the same local board of education may be demoted or the teacher's contract may not be renewed only for those reasons set forth in subsection (a) of Code Section 20-2-940." Except for the requirement for consecutiveness, the statute does not contain any conditions on the four contracts that indicates the legislature intended to bar the contracts signed in the years 2000 through 2004 in determining when four contracts had been signed. Since the plain language of the statute provides that a teacher who has signed a fourth consecutive contract has the right to notice and a hearing, the Local Board erred in not granting Appellant a right to notice and a hearing under the provisions of O.C.G.A. § 20-2-942 and § 20-2-940.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board denied Appellant her due process rights by not giving her notice of the reasons for her non-renewal and not granting her a hearing. Accordingly, the Local Board's decision is hereby
REVERSED.

This _____ day of March 2006.

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William Bradley Bryant
Vice Chairman for Appeals