

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>JENNIFER JOHNSON AND</b>	:	
<b>LOUIS M. RYAN,</b>	:	
	:	
<b>Appellants,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2006-69</b>
	:	
<b>BIBB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is a case of first impression regarding the interpretation of O.C.G.A. § 20-2-211(e), which permits the issuance of “provisional” contracts for the purpose of obtaining criminal background checks on new employees. The appeal is by Jennifer Johnson and Louis M. Ryan (Appellants) from a decision by the Bibb County Board of Education (Local Board) that they were provisional employees and, therefore, not entitled to a hearing on the merits of the Local Superintendent’s decision to terminate their contracts although they successfully passed their criminal background checks. Appellants claim that they were denied due process and that the Local Board’s decision was erroneous as a matter of law. The Local Board’s decision is reversed.

Appellants were employed by the Local Board on August 1, 2005, and given written contracts.<sup>1</sup> Both contracts provided, “The term of this Agreement is for a contract pay period of 180 days.” The contracts also contained a paragraph 12 that states:

.... The initial term of this Agreement shall be for two hundred (200) calendar days beginning on the Date of Acceptance by Employee unless sooner extended to the full term provided in paragraph 2, herein, [180 days] as evidenced by the initials of the Superintendent and Employee at the place indicated below. During the initial term of this Agreement, it shall be terminable at the will of either the School District or the Employee....

The school system received favorable background checks on Appellants by September 14, 2005. On November 14, 2005, the Local Superintendent notified Appellant Johnson that her contract was terminated because of “concerns” about her interaction with students. On November 28, 2005, the Local Superintendent sent a similar

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<sup>1</sup> O.C.G.A. § 20-2-211(a) requires employment contracts for teachers and other certificated personnel to be in writing.

notice to Appellant Ryan. Appellants asked for a hearing under the provisions of O.C.G.A. § 20-2-940, but the Local Superintendent informed them that they were “at-will” employees and not entitled to a hearing on why their contracts were terminated. Appellants then appealed the Local Superintendent’s decision to the Local Board. The Local Board conducted a hearing on the issue of whether Appellants were entitled to a hearing on the merits of their dismissals and concluded that since they were provisional employees they did not have any right to a hearing under the provisions of O.C.G.A. § 20-2-940. Appellants then filed an appeal to the State Board of Education.

Appellants claim they were entitled to a hearing under the provisions of O.C.G.A. § 20-2-940(a). The Local Board claims that Appellants were “at-will” employees because O.C.G.A. § 20-2-211(e)(1) permits the issuance of temporary contracts.

O.C.G.A. § 20-2-211(e)(1) provides:

All personnel employed ... after July 1, 2000, ... shall be fingerprinted and have a criminal record check made as required by this subsection. The local unit of administration shall have the authority to employ a person holding such a certificate under a provisional or temporary contract for a maximum of 200 days ... in order to allow for the receipt of the results of the criminal record check. .... The local unit of administration shall adopt policies to provide for the subsequent criminal record checks of noncertificated personnel continued in employment in the local unit of administration. (Emphasis added).

O.C.G.A. § 20-2-211(e) (LexisNexis, 2006).

O.C.G.A. § 20-2-940(a) provides that the contract of employment of a teacher “having a contract for a definite term” may be terminated for specific reasons, but the teacher is entitled to notice, a hearing, counsel, and subpoenas for witnesses. There are no exceptions provided for provisional employees; every employee who has a contract for a definite term can only be discharged for the limited reasons set forth in O.C.G.A. § 20-2-940(a) and only after a hearing.

Notwithstanding the provisions of O.C.G.A. § 20-2-940, the Local Board takes the position that a new teacher is an “at-will” employee for the first 200 days and can be terminated for any reason without a hearing, regardless of the outcome of the criminal background check. The Local Board contends that since the new teachers’ contracts are provisional or temporary, they are not “contracts for a definite term” and O.C.G.A. § 20-2-940(a) is inapplicable. The Local Board claims that the “at-will” status continues until the Local Superintendent and the teacher initial the original contract as provided in Paragraph 12 of the contracts.

Although O.C.G.A. § 20-2-211(e)(1) provides for “provisional or temporary” contracts, it does not provide for the issuance of “at-will” contracts to teachers. The words “provisional” and “temporary” are not terms of art that signify that the legislature

intended to establish another class of employees that are to be taken outside the provisions of O.C.G.A. § 20-2-940(a) and its limits on the reasons for dismissing an employee along with the need for a hearing if demanded by the employee. Instead, the legislature has created a conditional contract for the purpose of allowing “for the receipt of the results of the criminal record check.” O.C.G.A. §20-2-211(e)(1). The legislature has thus permitted local boards of education to issue contracts that contain a condition subsequent, a contract that fully vests benefits and liabilities upon the parties but is defeasible if certain conditions are not met.<sup>2</sup> New employees, including Appellants in the instant case, therefore, are not denied any of their rights under O.C.G.A. § 20-2-940 for some indeterminate time. If, however, the new employee fails to successfully complete the criminal background check, then the contract is subject to termination.

Based upon the foregoing, it is the opinion of the State Board of Education that the Local Board should have granted Appellants hearings under the provisions of O.C.G.A. §20-2-940 before terminating their services. Accordingly, the Local Board’s decision is  
REVERSED.

This \_\_\_\_\_ day of July 2006.

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William Bradley Bryant  
Vice Chairman for Appeals

#### **Summary**

This is a case of first impression regarding the interpretation of O.C.G.A. § 20-2-211(e), which permits the issuance of “provisional” contracts for the purpose of obtaining criminal background checks on new employees. The appeal is by Jennifer Johnson and Louis M. Ryan (Appellants) from a decision by the Bibb County Board of Education (Local Board) that they were provisional employees and, therefore, not entitled to a hearing on the merits of the Local Superintendent’s decision to terminate their contracts although they successfully passed their criminal background checks. Appellants claim that they were denied due process and that the Local Board’s decision was erroneous as a matter of law. The Local Board’s decision is reversed.

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<sup>2</sup> O.C.G.A. § 13-3-4 provides, “Conditions may be precedent or subsequent. A condition precedent must be performed before the contract becomes absolute and obligatory upon the other party. The breach of a condition subsequent may destroy the party’s rights under the contract or may give a right to damages to the other party, according to a true construction of the intention of the parties.”