

9-1-2003

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Recommended Citation

Toran Leslie, *EDUCATION Elementary and Secondary Education: Reinstate Fair Dismissal and Due Process Rights for Elementary and Secondary Educators; Provide Monetary Incentives to Exceptional Teachers*, 20 GA. ST. U. L. REV. (2003).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol20/iss1/27>

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EDUCATION

Elementary and Secondary Education: Reinstate Fair Dismissal and Due Process Rights for Elementary and Secondary Educators; Provide Monetary Incentives to Exceptional Teachers

CODE SECTIONS:	O.C.G.A. §§ 20-2-212.4 (new), -940 (amended)
BILL NUMBER:	SB 193
ACT NUMBER:	391
GEORGIA LAWS:	2003 Ga. Laws 391
SUMMARY:	The Act (1) provides elementary and secondary teachers with an incentive to improve students' test scores by offering teachers a 5% bonus for "significant increase[s]" in test scores and (2) provides fair dismissal rights for educators hired after July 1, 2000.
EFFECTIVE DATE:	July 1, 2004

History

Prior to 2000, the law afforded all teachers due process rights to challenge the termination of their employment and nonrenewal of their teaching contracts.¹ "[T]eachers . . . were allowed to request a hearing in order to understand why a dismissal decision was made and to voice their objections to decisions they believed were based on arbitrary or capricious reasons instead of the quality of classroom instruction."² Georgia's 2000 Education Reform Act amended Code section 20-2-940 by removing fair dismissal rights for teachers hired

1. See Audio Recording of Senate Proceedings, Apr. 8, 2003 (remarks by Sen. Dan Moody), at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter Senate Audio]; Merchuria Chase Williams, *GAE Supports Reinstatement of Fair Dismissal*, Dec. 28, 2002, at <http://gae.org/opinion.asp?SectionID=3&SubSectionID=120&DocumentID=687> (last visited June 2, 2003) [hereinafter *GAE Supports*].

2. *GAE Supports*, *supra* note 1.

after July 1, 2000.³ Teachers hired prior to July 1, 2000 retained their fair dismissal rights provided under Code section 20-2-940.⁴

Former Governor Roy Barnes championed the 2000 reforms and “alienat[ed] many educators in the process.”⁵ Former Governor Barnes argued that fair dismissal amounted to a tenure system and blamed it for Georgia students’ lackluster test scores.⁶ He contended that doing away with fair dismissal would “ensure that school systems could get rid of ineffective teachers.”⁷ The 2000 education reform angered many teachers and drove them to the polls in the 2002 election.⁸ The President of the Georgia Association of Educators (“GAE”) described the 2000 legislation as “divisive and demoralizing.”⁹

In 2000, the GAE fought against former Governor Barnes’ reforms and lost.¹⁰ In 2003, the GAE, along with the Professional Association of Georgia Educators (“PAGE”), returned to the political arena with an agenda that included restoring fair dismissal rights as a top priority.¹¹ The GAE argued that fair dismissal does not protect incompetent teachers.¹² The teachers’ union further noted that only Georgia and Mississippi did not provide quality teachers “protect[ion] . . . from bad management.”¹³

3. 2000 Ga. Laws 618, § 72, at 720 (formerly found at O.C.G.A. § 20-2-940 (2001)).

4. See Senate Audio, *supra* note 1; 2000 Ga. Laws 618, § 72, at 720 (formerly found at O.C.G.A. § 20-2-940 (2001)).

5. See Editorial, *State Cannot Afford Teachers’ Raises*, ATLANTA J. CONST., May 23, 2003, at A18, available at 2003 WL 19319029 [hereinafter *Teachers’ Raises*].

6. See *id.*

7. See James Salzer, *Perdue Balks at Teacher Raises*, ATLANTA J. CONST., May 1, 2003, at A1, available at 2003 WL 19316090.

8. See *id.*

9. Mercuria Chase Williams, Editorial, *Fair Dismissal Rights Give Teachers Respect*, ATLANTA J. CONST., Mar. 4, 2003, at A11, available at 2003 WL 13243474 [hereinafter *Give Teachers Respect*]. Governor Perdue “courted teachers” during his gubernatorial campaign by promising to reverse some of the previous administration’s reforms. See *Teachers’ Raises*, *supra* note 5. He “vowed to restore teachers’ right to appeal when their contracts are not renewed.” See Salzer, *supra* note 7.

10. See *GAE Supports*, *supra* note 1.

11. See Telephone Interview with Jill Hay, General Counsel, PAGE (May 22, 2003) [hereinafter *Hay Interview*]; Press Release, Georgia Association of Educators, Organization’s Legislative Priorities Reflect Members’ Commitment to Educational Excellence (Feb. 4, 2003), at <http://gae.org/releases.asp?SectionID=3&SubSectionID=109&DocumentID=688> (last visited June 2, 2003).

12. See *GAE Supports*, *supra* note 1.

13. Bob Cribbs, *Letter to the Editor on Fair Dismissal*, at <http://gae.org/releases.asp?SectionID=3&SubSectionID=120&DocumentID=685> (last visited June 2, 2003).

The GAE and PAGE cited numerous reasons for the need to provide teachers with fair dismissal rights. Fair dismissal laws originated because teachers were “dismissed for a variety of reasons not related to competency.”¹⁴ “Without due-process rights, teachers are subject to dismissal for arbitrary or capricious reasons.”¹⁵ If administrators have the right to terminate a teacher without justification, academic freedom will suffer.¹⁶ Positions in education are highly “politicized”; if educators hold views that do not conform to prevailing societal norms, they are vulnerable to termination.¹⁷ PAGE General Counsel Jill Hay also noted that the politics rampant in schools could result in unjust terminations.¹⁸ Further, school administrators often seek to reduce costs by firing experienced teachers and replacing them with less costly, less experienced teachers.¹⁹ Administrators also intensely scrutinize students’ test scores.²⁰ The GAE contends that it is far easier for school administrators to blame teachers for low test scores than it is for them to address the issues of class size and funding.²¹ Finally, the GAE states that absent fair dismissal protections “teachers are at will [sic] employees subjected to reprimand and dismissal based on false allegations of misconduct, parental complaints of too much homework or unfair grading standards, threats of reprisal for student discipline decisions, protesting the lack of teaching supplies and assistance or other frivolous, unsubstantiated complaints.”²²

To illustrate the overwhelming need for fair dismissal procedures, the GAE referenced the case of James Hope, a Gwinnett County teacher.²³ Mr. Hope had won the Teacher of the Year award “and was well supported by his colleagues and community.”²⁴ However, the administration suspended his teaching certificate because he posted

14. *Give Teachers Respect*, *supra* note 9.

15. *Id.*

16. Cribbs, *supra* note 13.

17. *Give Teachers Respect*, *supra* note 9.

18. *See* Hay Interview, *supra* note 11.

19. *Give Teachers Respect*, *supra* note 9.

20. *Id.*

21. *Id.*

22. *See GAE Supports*, *supra* note 1.

23. *See id.*

24. Cribbs, *supra* note 13.

on the Internet sample questions from a high-stakes promotion test.²⁵ At the time of this publication, the Gwinnett County school system had spent three years trying to prosecute Mr. Hope.²⁶ “Without fair dismissal protection, he would have been fired, not because he was an ineffective classroom teacher, but because he advocated for the best interests of children.”²⁷

At the time of the Act, Georgia was experiencing a “severe teacher shortage.”²⁸ According to GAE President Merchuria Chase Williams, “[r]eturning respect to teachers is necessary to help solve the teacher shortage” in Georgia.²⁹ The GAE argued that fair dismissal rights are necessary to show teachers that they are respected.³⁰ At the intense urging of teachers’ groups, this bill was introduced to reinstate fair dismissal hearings to teachers.³¹ Legislators and teachers’ organizations alike have high hopes that the Act will allow teachers to do their jobs with the knowledge that they are appreciated.³² Ms. Williams stressed that fair dismissal does not preclude termination of teachers failing to meet “acceptable standards.”³³ Rather, it “guards against the dismissal being based on discriminatory treatment, arbitrary and capricious actions, unfounded allegations of misconduct and other threats unrelated to competency” while “encourag[ing] teachers to be innovative and creative for the benefit of their students without fear of reprisal.”³⁴

25. See Merchuria Chase Williams, Editorial, *Bonus for Teachers a Good Investment*, ATLANTA J. CONST., May 2, 2003, at A17, available at 2003 WL 19316206 [hereinafter *Bonus for Teachers*].

26. See *id.*

27. *GAE Supports*, *supra* note 1.

28. *Give Teachers Respect*, *supra* note 9.

29. *Bonus for Teachers*, *supra* note 25.

30. See *Give Teachers Respect*, *supra* note 9.

31. See Senate Audio, *supra* note 1 (remarks by Sen. Dan Moody).

32. See *id.*

33. Merchuria Chase Williams, Editorial, *Focus is Fair Dismissal, Not “Tenure,”* ATLANTA J. CONST., Apr. 15, 2003, at A19, available at 2003 WL 16551488.

34. *Id.*

*SB 193**Introduction*

Senator Horacena Tate of the 38th district wrote SB 193 “in its most meaningful parts.”³⁵ Senators Dan Moody, Joey Brush, Charles Clay, Horacena Tate, and Renee Unterman of the 27th, 24th, 37th, 38th, and 45th districts, respectively, sponsored SB 193.³⁶ The bill, as introduced, would have amended Code section 20-2-940, relating to the grounds and procedures for terminating or suspending contracts of employment, by striking and replacing several subsections.³⁷ SB 193, as introduced, also would have amended Code section 20-2-942 by providing fair dismissal rights to teachers hired after July 1, 2000.³⁸

Upon SB 193’s introduction on February 27, 2003, the bill was referred to the Senate Education Committee.³⁹ The Senate Committee favorably reported the bill on March 27, 2003.⁴⁰ The Senate voted on several floor amendments on April 8, 2003.⁴¹ The first amendment, supported by the GAE and PAGE, would have inserted new Code section 20-2-221 to prohibit schools from requiring teachers to perform any duties other than student instruction and student supervision.⁴² The Senate defeated this amendment by a vote of 24 to 28.⁴³ The second amendment would have stricken Code subsection 20-2-212(b), relating to teachers’ salaries, but it was withdrawn.⁴⁴

35. Jim Wooten, *Education Reform Has Short Life Span*, ATLANTA J. CONST., Apr. 29, 2003, at A13, available at 2003 WL 19315611.

36. See SB 193, as introduced, 2003 Ga. Gen. Assem.

37. Compare 1998 Ga. Laws 750, § 2, at 759 (formerly found at O.C.G.A. § 20-2-940 (2002)), with SB 193, as introduced, 2003 Ga. Gen. Assem.

38. Compare 2000 Ga. Laws 618, § 72, at 720 (formerly found at O.C.G.A. § 20-2-942(d) (2002)), with SB 193, as introduced, 2003 Ga. Gen. Assem.

39. See State of Georgia Final Composite Status Sheet, SB 193, Apr. 25, 2003.

40. See *id.*

41. See *id.*

42. Compare SB 193, as introduced, 2003 Ga. Gen. Assem., with Failed Senate Floor Amendment to SB 193, introduced by Sen. Steve Thompson, Apr. 8, 2003. That amendment would have provided that “[c]ertificated teachers shall not be required to perform duties other than instruction of students and supervision of students.” Failed Senate Floor Amendment to SB 193, introduced by Sen. Steve Thompson, Apr. 8, 2003.

43. See Georgia Senate Voting Record, SB 193 (Apr. 8, 2003).

44. See Senate Audio, *supra* note 1 (remarks by Sen. Steve Thompson).

The third amendment, a “housekeeping” matter, simply clarified the original bill’s language and passed by a vote of 44 to 0.⁴⁵

The real controversy surrounded amendments 4 and 4(a).⁴⁶ Senator Brush characterized the vote over amendments 4 and 4(a) as a choice between the old law, which was a good law, and SB 193, as introduced, which was a better law.⁴⁷ Amendment 4 provided for substituting the original bill’s language with language identical to Code section 20-2-940 before the 2000 reforms.⁴⁸ Amendment 4(a) simply provided for reinstating the original bill’s language.⁴⁹ Amendment 4(a) supporters argued that the process before the 2000 reforms was cumbersome and costly, whereas SB 193 featured a more streamlined process.⁵⁰ Amendment 4 supporters pointed out that the GAE and PAGE preferred that amendment to SB 193 because it was more in line with what teachers wanted and would restore pride to the profession.⁵¹ They argued that amendment 4(a) existed simply to undercut educators’ wishes.⁵² Further, they contended that amendment 4(a) set up a two-tiered system wherein the law would treat those teachers hired prior to July 1, 2000 differently than those teachers hired after that date.⁵³ The debate over the two amendments was lengthy and sometimes heated.⁵⁴ Amendment 4(a) passed by a vote of 27 to 26.⁵⁵ Senator Terrell Starr of the 44th district requested reconsideration of the amendment’s adoption.⁵⁶ Upon reconsideration, amendment 4(a) lost by a vote of 26 to 27.⁵⁷ Amendment 4 passed by an overwhelming vote of 51 to 2.⁵⁸

45. See Georgia Senate Voting Record, SB 193 (Apr. 8, 2003); see also Senate Audio, *supra* note 1 (remarks by Sen. Dan Moody).

46. See generally Senate Audio, *supra* note 1 (remarks by Sen. Joey Brush).

47. See *id.* (remarks by Sen. Joey Brush).

48. See *id.* (remarks by Sen. Joey Brush).

49. See *id.* (remarks by Sen. Joey Brush).

50. See Telephone Interview with Sen. Joey Brush, Senate District No. 24 (May 27, 2003) [hereinafter Brush Interview].

51. See Senate Audio, *supra* note 1 (remarks by Sen. Horacena Tate).

52. See *id.* (remarks by Sen. Horacena Tate).

53. See Brush Interview, *supra* note 50 (discussing the concerns of opponents of amendment 4(a) that SB 193, as introduced, or as amended by 4(a) would result in a bifurcated system).

54. See Senate Audio, *supra* note 1.

55. See Georgia Senate Voting Record, SB 193 (Apr. 8, 2003).

56. See Senate Audio, *supra* note 1 (remarks by Sen. Terrell Starr).

57. Georgia Senate Voting Record, SB 193 (Apr. 8, 2003).

58. *Id.*

The fifth amendment would have added new Code section 20-2-212.4 to provide incentive pay for teachers who earned “a significant increase in average scores” on standardized tests chosen by the State Board of Education.⁵⁹ The amendment also gave the State Board of Education the authority to define the meaning of “significant increase.”⁶⁰ Senator Brush hailed the amendment as a positive influence for teachers because it offered teachers a 5% annual increase in salary for improving test scores.⁶¹ The Senate overwhelmingly adopted the fifth amendment by a vote of 45 to 0.⁶² The Senate passed SB 193, as amended, by a vote of 53 to 0.⁶³

Later that day, the bill was introduced in the House, and the Speaker referred it to the Education Committee, which favorably reported the bill on April 17, 2003.⁶⁴ During debate on April 25, 2003, the final day of the legislative session, Representative David Lucas, Sr. of the 105th district noted that SB 193 was basically the same as HB 81, except that SB 193 contained a section providing for the 5% incentive-based pay raise.⁶⁵ Representative Lucas urged passage without amendment so that the bill would not “get caught up” in the Senate.⁶⁶ However, the Minority Report, which the House Clerk read on the floor, raised concerns about the bill’s incentive-based pay provisions because the bill lacked an appropriations provision to fund the incentives.⁶⁷ Representative Jeanette Jamieson of the 22nd district offered an amendment to address those concerns.⁶⁸ Representative Jamieson noted that passing a bill that makes teachers think that they will receive a 5% pay increase when the budget lacks a provision for the incentive would be unfair.⁶⁹ Further, she was concerned that the bill did not limit the incentive pay to annual review.⁷⁰ Representative Jamieson’s amendment would

59. See SB 193 (SFA), 2003 Ga. Gen. Assem.

60. See *id.*

61. See Senate Audio, *supra* note 1 (remarks by Sen. Joey Brush).

62. Georgia Senate Voting Record, SB 193 (Apr. 8, 2003).

63. *Id.*

64. See State of Georgia Final Composite Status Sheet, SB 193, Apr. 25, 2003.

65. See Audio Recording of House Proceedings, Apr. 25, 2003 (remarks by Rep. David Lucas, Sr.), at <http://www.ganet.org/services/leg/audio/2003archive.html> [hereinafter House Audio].

66. See *id.*

67. See *id.* (remarks by House Clerk Robbie Rivers).

68. See *id.* (remarks by Rep. Jeanette Jamieson).

69. See *id.*

70. See *id.*

condition the incentive-based pay raise upon appropriation by the General Assembly and upon annual improvements in test scores.⁷¹ Other Representatives argued that her amendment was a “poison pill” that would “kill” the bill upon its return to the Senate.⁷² They urged adoption without amendment.⁷³ The House passed the Jamieson amendment by a vote of 85 to 82.⁷⁴ Reconsideration was requested but failed by a vote of 81 to 83.⁷⁵ The bill, as amended, passed by a vote of 160 to 7.⁷⁶

Upon return to the Senate later that day, Senator Dan Moody of the 27th district moved to disagree to the House changes and to assign the bill to a Conference Committee.⁷⁷ Senator Tate moved to agree to the House changes.⁷⁸ She noted that the House bill merely clarified SB 193’s language.⁷⁹ Further, Senator Robert Brown of the 26th district urged approval.⁸⁰ On a motion to disagree to the House changes, the Senate voted to disagree by a vote of 28 to 26.⁸¹ The House subsequently receded its position by a vote of 92 to 72.⁸² On May 5, 2003, the Senate sent SB 193 to Governor Sonny Perdue.⁸³

The Act

The Act adds new Code section 20-2-212.4 to provide teachers with a 5% annual increase in state compensation for “significant” improvement in tests scores.⁸⁴ The Act authorizes the State Board of Education to define “significant increase” and to decide which test shall be used to determine whether average scores have increased.⁸⁵

71. See House Audio, *supra* note 65.

72. See *id.* (remarks by Rep. David Lucas, Sr.).

73. See *id.*

74. See Georgia House of Representatives Voting Record, SB 193 (Apr. 25, 2003).

75. See *id.*

76. See *id.*

77. See Audio Recording of Senate Proceedings, Apr. 25, 2003 (remarks by Sen. Dan Moody), at <http://www.ganet.org/services/leg/audio/2003archive.html>.

78. See *id.* (remarks by Sen. Horacena Tate).

79. See *id.*

80. See *id.* (remarks by Sen. Robert Brown).

81. See Georgia Senate Voting Record, SB 193 (Apr. 25, 2003).

82. See State of Georgia Final Composite Status Sheet, SB 193, Apr. 25, 2003.

83. See *id.*

84. See O.C.G.A. § 20-2-212.4 (Supp. 2003).

85. See *id.*

The Act also provides fair dismissal rights for teachers hired after July 1, 2000 by amending Code section 20-2-940.⁸⁶

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86. Compare 2000 Ga. Laws 618, § 72, at 720 (formerly found at O.C.G.A. § 20-2-942(d) (2002)), with O.C.G.A. § 20-2-942 (Supp. 2003).