

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>BRENDA COMER,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	<b>CASE NO. 1996-54</b>
<b>vs.</b>	:	
	:	<b>DECISION</b>
<b>ATLANTA</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	

This is an appeal by Brenda Comer (Appellant) from a decision by the Atlanta Board of Education (Local Board) not to renew her contract based upon charges of incompetence, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that the Local Board failed to take her health problems into consideration and, because of the health problems, the Local Board could not find that she was incompetent, willfully neglected her duties, or that other good and sufficient cause existed not to renew her contract. The Local Board's decision is sustained.

Appellant was a first grade teacher at M. Agnes Jones Elementary School. She had been employed by the Atlanta School System since 1980, but the 1995-1996 school year was her first year at M. Agnes Jones Elementary School. During the year, Appellant's principal frequently observed her sleeping in class and unable to maintain discipline within the class. Appellant was frequently absent. Six of her absences resulted because she did not want to see the principal on those days. She also failed to submit lesson plans and frequently failed to record student grades. On March 16, 1996, Appellant went on a leave of absence for health reasons.

On April 4, 1996, the Local Superintendent notified Appellant that he would not recommend renewal of her teaching contract. The Local Superintendent then charged Appellant with incompetency, willful neglect of duty, and other good and sufficient cause when Appellant requested a hearing.

After two days of hearings, a tribunal found that Appellant did not show any improvement in her teaching methods during the year after being put on a professional development plan in October, 1995. In an evaluation conducted in February, 1996, she

received five “needs improvement” ratings; she had received seven “needs improvement” ratings in January, 1996. The tribunal also found that Appellant frequently dozed in class, thus putting her students in danger. She was also unable to maintain discipline within her class.

The tribunal found that Appellant was incompetent because of her inability to deliver effective instruction and inability to maintain discipline of her students. The tribunal also found that Appellant willfully neglected her duties because she was absent from school for the simple reason that she did not want to see the principal on six of those days. The tribunal also found that Appellant’s doctor had placed her on disability leave on February 16, 1996, but Appellant changed the date on the form to March 16, 1996, which was a willful act that placed students in danger because of her sleeping disorder. The tribunal also found that Appellant consistently denied that she had any health problems until she went on medical leave. As a result, the tribunal discounted Appellant’s contentions that her lapses were all health related.

The hearing tribunal recommended against renewing Appellant’s contract. On August 12, 1996, the Local Board adopted the tribunal’s recommendation. Appellant then filed an appeal to the State Board of Education.

Appellant claims that the Local Board failed to prove she was incompetent or willfully neglected her duties because the tribunal failed to consider the effect of her health problems. The Local Board contends there was evidence presented to support its decision.

"The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). The record is clear that the tribunal did not overlook the effects of Appellant’s health problems. The tribunal discounted Appellant’s testimony because she did not mention any health problems until after she learned she would not be recommended for renewal. Appellant’s arguments overlook that the tribunal must make all decisions on credibility and such decisions cannot be made by the State Board of Education.

Another example of Appellant’s willful neglect of duty and incompetence that is reflected in the record and cannot be attributed to her health is the evidence regarding Appellant’s failure to post grades, and her practice of posting the same grade for a student for an entire grading period so she would not have to average grades. The State Board of Education

concludes that there was evidence to support the Local Board's findings of incompetence, willful neglect of duty, and other good and sufficient cause.

Appellant claims that the tribunal erred in receiving evidence relating to her evaluations in previous years. The evidence concerning the previous years showed the extent of the assistance offered to Appellant. Such evidence is relevant and admissible. Even if the evidence is disregarded, there was sufficient evidence of actions in the 1995-1996 school year to support the Local Board's decision. The State Board of Education concludes that it was not error to admit the evidence relating to evaluations in previous years.

Appellant also raised an issue that the tribunal should not have made any findings concerning the Americans With Disabilities Act, 42 U.S.C. §§ 12101 - 12213. During oral arguments, however, counsel for both parties agreed that the State Board of Education should not address this issue.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision that Appellant was incompetent, willfully neglected her duties, and other good and sufficient cause existed not to renew her teaching contract. The Local Board's decision, therefore, is SUSTAINED.

This 14<sup>th</sup> day of November, 1996.

Robert M. Brinson  
Vice Chairman for Appeals