

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ERVIN MITCHELL,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2010-04</b>
	:	
<b>DEKALB COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Ervin Mitchell (Appellant) from a decision by the DeKalb County Board of Education (Local Board) not to renew his teaching contract on the basis of incompetency, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940 following a hearing before a three-member tribunal. Appellant claims that the Local Board failed to provide him with proper accommodations under Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794) and that the evidence was insufficient to sustain the charges. The Local Board’s decision is sustained.

Section 504 is a federal law that requires employers to make accommodations for employees with disabilities; it is not concerned with school law. Under the provisions of O.C.G.A. § 20-2-1160, the State Board of Education only has jurisdiction to review decisions of local boards of education concerning “the construction or administration of the school law”. O.C.G.A. § 20-2-1160(a). Although the record shows that the Local Board initially made some changes in Appellant’s teaching circumstances, the evidence is incomplete concerning whether the Local Board was in compliance with all the requirements of Section 504. Since Section 504 does not involve school law, the State Board does not have any special expertise in deciding any issues arising under Section 504, nor does it have any jurisdiction to decide such issues. *See, e.g., Servicemaster Mgmt. Serv. Corp. v. Cherokee Cnty. School System*, 257 Ga. 60, 354 S.E.2d 424 (1987). The State Board of Education, therefore, declines to address Appellant’s Section 504 claim.<sup>1</sup>

Appellant’s next claims go to whether there was any evidence to support the Local Board’s 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

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<sup>1</sup> Appellant suggests that he is exhausting his administrative remedies in pursuing this appeal before filing a claim with the Equal Employment Opportunity Commission, the body charged with enforcement of §504 claims. Appellant, however, has not shown that the filing of a claim with the State Board of Education is a prerequisite for a discrimination claim.

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). "It is the duty of the hearing tribunal to determine the veracity of the witnesses and the State Board of Education will not go behind such determination if there is any evidence to support the decision." *David L. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1996-1 (Ga. SBE, Apr. 11, 1996). "The tribunal sits as the trier of fact and, if there is conflicting evidence, must decide which version to accept. When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F. W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 13, 1998).

The tribunal in this case found that Appellant failed to properly complete and update student individualized educational plans (IEPs), conducted IEP meetings improperly, falsified IEPs by listing as present teachers who were not present, failed to notify service providers of IEP meetings, failed to correct errors in IEPs, failed to turn in lesson plans for the first month of the 2008-2009 school year, submitted inadequate lesson plans, failed to prepare lesson plans for substitute teachers, and failed to obtain substitute teachers before being absent. In addition, the tribunal found that Appellant failed to provide adequate classroom instruction.

Although Appellant had explanations for each of the tribunal's findings, the tribunal, as the trier of fact, placed more weight on the opposing testimony and there was evidence to support the tribunal's findings. The lead teacher for special education testified that she constantly had to correct the IEPs submitted by Appellant, that Appellant missed deadlines for updating IEPs, and improperly listed as IEP meeting attendees people who were not present. The lead teacher also testified that Appellant's error rate greatly exceeded that of the other eleven teachers she supervised. The special education coordinator testified that Appellant did not provide any instruction to his students.

Based upon the foregoing and a review of the record, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision not to renew Appellant's teaching contract. Accordingly, the Local Board's decision is SUSTAINED.

This \_\_\_\_\_ day of September 2009.

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William Bradley Bryant  
Vice Chairman for Appeals