

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>DAVID BERRY,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2010-11</b>
	:	
<b>WALTON COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by David Berry (Appellant) from a decision by the Walton County Board of Education (Local Board) not to renew his contract as a special education teacher based upon its findings of incompetence, willful neglect of duty, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there is no evidence to support the charges. The Local Board’s decision is sustained.

Appellant was employed by the Local Board as a special education teacher in a high school and assigned as a co-teacher. Because of complaints from his co-teachers, Appellant’s assistant principals sent Appellant a letter in September 2008 in which they pointed out several incidents where Appellant displayed inappropriate conduct, disrupted the learning environment, and disregarded school rules. The assistant principals directed Appellant to follow classroom rules and procedures, to avoid conversations that were off-topic, to refrain from disrupting the teaching, and not to leave class for unrelated activities. Despite Appellant’s assurances that his performance would improve, his co-teachers continued to complain about Appellant’s failure to assist in planning and teaching, his continued classroom disruptions, and his inappropriate singling out of students who were receiving special education services.

In December 2008, Appellant’s principal sent him a 6-page letter that outlined various inappropriate actions taken by Appellant since the assistant principals had admonished him in September. The principal again directed Appellant to work with his co-teachers in a collaborative manner, to act professionally in the classroom, to refrain from disrupting instruction, to maintain student confidentiality, and to provide the services required by his students’ individualized education programs. Appellant’s principal wrote to him again in February 2009 and noted that there had been some improvements, but further improvement was needed in working with co-teachers and avoiding disrupting the classroom with off-topic comments and misinformation.

On April 20, 2009, the Local Superintendent sent Appellant a letter that the Local Superintendent would not recommend renewal of Appellant’s contract because of incompetency, willful neglect of duties, and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant requested a hearing on the charges, which the Local Board held on June 1, 2009. At the conclusion of the hearing, the Local Board found Appellant guilty of all three

charges and voted not to renew his teaching contract. Appellant then filed an appeal with the State Board of Education.

Appellant claims that the evidence does not support the Local Board's findings because there was no showing that he willfully avoided performing his duties, and the principal testified that he was capable of performing his duties. Appellant also claims that there was no evidence that his ability to teach had been adversely impacted.

"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).

Incompetence denotes the lack of ability, legal qualification, or fitness to perform the assigned job duties. *West v. Habersham Cnty. Bd. of Educ.*, Case No. 1986-53 (Ga. SBE, Feb. 12, 1987). Incompetence also denotes the "inability to perform in the position in which the teacher is working." *Hanson v. Buford City Bd. of Educ.*, Case No. 1994-53 (Ga. SBE, Sep. 8, 1994). In the instant case, there was evidence that Appellant was unable to work collaboratively with his co-teachers, that he continued to interrupt the teaching of his co-teachers by making inappropriate comments despite attempts to correct him, and that he was unable to work effectively in the classroom except during periods of observation. The State Board of Education, therefore, concludes that there was evidence to support the Local Board's decision that Appellant was incompetent.

If, as Appellant argues, he was not incompetent, his actions displayed a willful neglect of duty. The terms "willful neglect of duty" denotes a situation where there is "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct ... [which requires] a showing of more than mere negligence." *Terry v. Houston Cnty. Bd. of Educ.*, 178 Ga. App. 296, 299, 342 S.E.2d 774, 776 (1986). If Appellant was able to perform his duties, then his failure to perform them after repeated redirection from his assistant principals and his principal indicates that his failure to perform was intentional and not the result of mere negligence.

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. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_\_ day of October 2009.

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William Bradley Bryant  
Vice Chairman for Appeals