

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

JONI HOWARD-SKIPPER,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2012-10
	:	
ATLANTA INDEPENDENT	:	DECISION
SCHOOL SYSTEM,	:	
	:	
Appellee.	:	

This is an appeal by Joni Howard-Skipper from a decision by the Atlanta Independent School System (“Local Board”) to non-renew her employment contract. The Local Board did not renew Appellant’s employment contract, finding that she violated the Local Board’s policy regarding attendance and punctuality, thereby constituting willful neglect of duty and insubordination under O.C.G.A. § 20-2-940(a). On appeal, Appellant asserts that the Local Board’s decision is not supported by the evidence. Appellant further asserts that the hearing officer precluded her from asserting her disability caused her to be tardy, and that she was denied a reasonable accommodation. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

Appellant was employed with the Local Board as a teacher for approximately seventeen (17) years. On or about June 14, 2011, Appellant was notified that her 2011-2012 employment contract was being proposed for non-renewal. Appellant appealed her proposed non-renewal from employment. On July 29, 2011, the Local Board provided Appellant a hearing at which Appellant was given the opportunity to present evidence before a tribunal. At the conclusion of the hearing, the tribunal found that Appellant had engaged in willful neglect of duty and insubordination, and therefore issued a recommendation to non-renew her employment contract. The Local Board adopted the hearing tribunal’s recommendation. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

For the 2010-2011 school year, Appellant was a seventh grade science teacher at Brown Middle School. Appellant was required to report to work by 8:30 a.m. On September 20, 2010, Appellant was counseled by the Principal for reporting late to work on three (3) dates in September. On November 22, 2010, Appellant was counseled by the Principal because she was tardy an additional eighteen (18) times for a total of twenty-one (21) times since the beginning of the school-year. On December 1, 2010, Appellant was counseled by the Principal because she

was tardy again, for a total of twenty-two (22) times since the beginning of the school-year. On January 31, 2011, Appellant was counseled because she was tardy three (3) more times for a total of twenty-five (25) times since the beginning of the school-year. From February 4, 2011, to February 18, 2011, Appellant was placed on a Professional Development (“PDP”) because of her tardiness. Appellant was not tardy during this time period, and satisfied the requirements of the PDP.

On February 21, 2011, after the PDP, Appellant was absent two (2) more times for a total of twenty-seven (27) times since the beginning of the school-year. On February 21, 2011, the Principal informed Appellant that he intended to recommend Appellant for non-renewal because of her absences. On March 13 and March 17, 2011, Appellant again reported to work late. On or about June 14, 2011, the Local Board notified Appellant that her 2011-2012 employment contract was being proposed for non-renewal.

At the hearing, Appellant admitted that she was required to be at work at 8:30 a.m. It is undisputed that as of February 21, 2011, Appellant was late twenty-seven (27) times. Appellant testified that she was late because of her injuries/disabilities that caused her to move slowly. Appellant further testified that she requested accommodations because of her injuries/disabilities, but that she did not request an accommodation of reporting to work late. The Principal discussed with Appellant her tardiness on numerous occasions. The Principal further informed Appellant that under the Local Board’s policy that more than six (6) tardies during a twelve (12) month period would result in corrective action. According to the Principal, Appellant told the Principal that she was late because of traffic. Appellant admits that it was within her control to get to work on time.

III. ERRORS ASSERTED ON APPEAL

Appellant asserts that the evidence in the record does not support the Local Board’s decision. The State Board is required to affirm the decision of the Local Board if there is any evidence to support the decision of the Local Board, unless there is abuse of discretion or the decision is arbitrary and capricious as to be illegal. See Ransum v. Chattooga County Bd. of Educ., 144 Ga. App. 783 (1978); Antone v. Greene County Bd. of Educ., Case No. 1976-11 (Ga. SBE, Sep. 1976). For the reasons set forth below, the State Board finds that the record contains legally sufficient evidence to support the decision of the Local Board.

A. Record Evidence.

Appellant contends that the decision of the Local Board is erroneous¹ because she did not intend to report to work late, and therefore, she did not engage in willful neglect of duty or

¹ Appellant also contends that the Local Board did not follow its progressive discipline policy. However, the Local Board’s policy does not provide Appellant with a substantive benefit under the Fair Dismissal Act. See Hemak v. Bibb County Bd. of Educ., Case No. 1999-27 (Ga. SBE, Aug. 1999); citing Fry v. Clayton County Bd. of Educ., Case No. 1987-27 (Ga. SBE, 1987).

insubordination. “[I]nsubordination and wilful neglect of duties both involve an intentional violation or refusal to comply with a known rule.” Chattooga County Bd. of Educ. V. Searels, 302 Ga. App. 731 (2010).² A “willful neglect of duty” requires “a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. . . . ‘[W]illfulness’ requires a showing of more than mere negligence.” Terry v. Houston County Bd. of Educ., 178 Ga. App. 296, 342 S.E.2d 774 (1986). Moreover, willful neglect of duties exists if Appellant knew, or should have known, what her obligations were pursuant to the Local Board’s policy. See Clemmons v. Chattooga County Bd. of Educ., Case No. 1998-27 (Ga. SBE, Sep. 1998); see also Maria Beal-Parker v. DeKalb County Bd. of Educ., Case No. 2008-17 (Ga. SBE, Feb. 2008); Mahone v. Clayton County Bd. of Educ., Case No. 2010-77 (Ga. SBE, July 2010).

In this case, the record contains more than sufficient evidence to support the Local Board’s decision. The Local Board required Appellant to be at work at 8:30 a.m. The Local Board’s policy provides that more than six (6) tardies during a twelve (12) month period will result in corrective action. During the 2010-2011 school year, Appellant was late twenty-seven (27) times. Appellant was counseled on at least four (4) occasions regarding tardiness, and directed to report to work on time. However, Appellant continued to report to work late. Appellant was aware of the work rule and failed to comply with it. Moreover, the Appellant admitted that it was within her control to get to work on time. Thus, the record supports the Local Board’s decision that Appellant willfully violated its policy and engaged insubordination. Therefore, this Board finds that the Local Board’s decision is supported by the evidence.

B. Disability/Reasonable Accommodation.

At oral argument, Appellant asserted that the Local Board erred because evidence regarding her disabilities and request for a reasonable accommodation was excluded. In response, the Local Board contends that Appellant did not assert an objection on this ground at the hearing. Thus, the Local Board contends that this objection was not raised before the hearing officer, and, therefore, cannot be raised on appeal to the State Board. See Hutcheson v. DeKalb County Bd. of Educ., Case No. 1980-5 (Ga. SBE, May 1980); Z.G. v. Henry County Bd. of Educ., Case No. 2007-05 (Ga. SBE, Jan. 2007) citing Sharpley v. Hall County Bd. of Educ., 251 Ga. 54 (1983).

A review of the record shows that the hearing officer only excluded Appellant from addressing the requirements of federal law. However, the hearing officer allowed the Appellant to offer evidence regarding her disabilities and requests for reasonable accommodation. In response, Appellant failed to state an objection to the ruling. Thus, since an objection was not

² Appellant relies on Searels in support of her case. However, Searels supports the Local Board’s decision. Like the teacher in Searels, Appellant was warned regarding the work requirements, but continued to engage in conduct in violation of the work requirements and directives. Thus, in Searels, the Court of Appeals affirmed the teacher’s termination.

raised before the hearing officer, an objection cannot be raised on appeal to the State Board. Furthermore, even assuming Appellant properly preserved an objection, the hearing officer allowed Appellant to offer evidence regarding her disabilities and requests for an accommodation. Therefore, the Local Board did not err.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence supports the decision of the Local Board, and it is, therefore, **SUSTAINED**.

This _____ day of December 2011.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS