

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

<b>ANITA BROWN,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>vs.</b>	:	<b>CASE NO. 2006-81</b>
	:	
<b>MCDUFFIE COUNTY</b>	:	
<b>BOARD OF EDUCATION,</b>	:	
	:	
<b>Appellee.</b>	:	<b>DECISION</b>

This is an appeal by Anita Brown (Appellant) from a decision by the McDuffie County Board of Education (Local Board) not to renew her teaching contract for the 2006-2007 school year because of willful neglect of duty under the provisions of O.C.G.A. § 20-2-940. Appellant claims that there was no evidence of willful neglect of duty. The Local Board’s decision is reversed.

The Local Board employed Appellant in 1998 as a special education teacher. Appellant became sick during the 2004-2005 school year and missed most of the year. The Local Superintendent initially notified Appellant that her contract for the 2005-2006 school year would not be renewed, but this decision was changed and Appellant received a contract for the 2005-2006 school year after a meeting with the Assistant Superintendent in July 2005. Shortly after the 2005-2006 school year started, Appellant again became ill and was absent from August 8, 2005, until May 3, 2006.<sup>1</sup>

Appellant had only nine and one-half days of sick leave time available when she became sick. The Local Board initially granted her medical leave from August 8, 2005, through December 9, 2005. The Local Board then extended the medical leave from December 9, 2005, through the end of the 2005-2006 school year. Shortly after Appellant went on medical leave, on August 18, 2005, the Assistant Superintendent notified Appellant that she had used five of her sick days and that after she exhausted her remaining sick days she would enter a status of leave without pay. Appellant was not paid after she used all of her sick days.<sup>2</sup>

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<sup>1</sup> The hearing regarding the nonrenewal of Appellant’s contract, from which this appeal arises, was held before the Local Board on May 3, 2006. The nature of Appellant’s illness was not disclosed during the hearing.

<sup>2</sup> In its brief, the Local Board states that Appellant was not compensated after August 18, 2005.

On March 10, 2006, the Local Superintendent notified Appellant that her contract would not be renewed for the 2006-2007 school year. When Appellant requested a hearing and reasons for the nonrenewal, the Local Superintendent charged her with willful neglect of duty. The basis for the charge was that Appellant failed to continue to supply lesson plans and update the individualized education plans of her students while she was on leave.

At the hearing before the Local Board on May 3, 2006, evidence was presented that Appellant submitted lesson plans on August 16-19, 23, 24, and 30, 2005. There was testimony that Appellant did not submit lesson plans on August 25, 26, and 29, 2005. Appellant did not submit any lesson plans after August 30, 2005. Without issuing any findings of fact, the Local Board voted not to renew Appellant's teaching contract for the 2006-2007 school year. Appellant then filed an appeal to the State Board of Education.

Appellant claims that there was no evidence to support the Local Board's decision. Willful neglect of duties requires "a flagrant act or omission, an intentional violation of a known rule or policy, or a continuous course of reprehensible conduct. Under either of these interpretations, 'willfulness' 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). "[T]o sustain the charge of willful neglect of duties, a local board of education has to establish that the teacher or employee knowingly undertook to avoid performing assigned or expected duties." *McLeod v. Gordon Cnty. Bd. of Educ.*, Case No. 1982-21 (Ga. SBE, Jan. 13, 1983). In the instant case, there was no showing by the Local Board that Appellant intentionally violated any known rule or policy of the Local Board, nor was there any showing that Appellant knowingly avoided performing any assigned or expected duties.

The Local Board contends that teachers on leave were expected to prepare lesson plans and to keep up with their students. The Local Board, however, did not introduce any written policies that set forth this expectation, nor did they establish that this unwritten policy was communicated to Appellant. The evidence showed that Appellant filed lesson plans during the period she was being paid, but she stopped shortly after she went into an unpaid leave status. Appellant testified that she expected the school system would have hired a substitute teacher capable of preparing lesson plans. There was no showing that Appellant's principal made any effort to inform Appellant that lesson plans were expected during a long-term illness even in the absence of any pay. Although the Local Board's expectation might be implicit for a short-term illness, e.g., one or two weeks, where a teacher is on leave for an extended period and is not receiving any pay, such an expectation cannot be said to be implicit. On the contrary, expecting an employee to perform services without pay over an extended period is counterintuitive. Thus, even if there was an expectation that teachers are expected to prepare lesson plans when they are on leave, such an expectation can only apply for short-term illnesses and would not be applicable to Appellant's situation, and the failure to prepare such plans certainly does not amount to willful neglect of duty.

The Local Board also claims that Appellant's actions were willful because she agreed to teach during the 2005-2006 school year when she met with the assistant superintendent in July 2005. The Local Board, however, did not contest the legitimacy of Appellant's illness and granted her long-term medical leave. If a teacher becomes ill and is unable to fulfill any contracted duties, the teacher's inability to perform such duties cannot be deemed willful in the absence of any showing that the teacher purposefully became ill.

The State Board of Education concludes that the Local Board failed to carry its burden of proof to establish that Appellant willfully neglected her duties. Instead, the Local Board granted her long-term medical leave without pay and Appellant's expectation that the Local Board would have hired a certified teacher, capable of preparing lesson plans, to replace her was not unreasonable, especially considering that her principal did not ask her for any lesson plans.

Based upon the foregoing, it is the opinion of the State Board of Education that there was no showing that Appellant willfully neglected her duties. Accordingly, the Local Board's decision is REVERSED.

This \_\_\_\_\_ day of December 2006.

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William Bradley Bryant  
Vice Chairman for Appeals