

**STATE BOARD OF EDUCATION  
STATE OF GEORGIA**

<b>GLORIA JEAN SMITH,</b>	:	
	:	
<b>Appellant,</b>	:	
	:	
<b>v.</b>	:	<b>CASE NO. 2010-82</b>
	:	
<b>HENRY COUNTY BOARD OF EDUCATION,</b>	:	<b>DECISION</b>
	:	
<b>Appellee.</b>	:	

This is an appeal by Gloria Jean Smith from a decision by the Henry County Board of Education (“Local Board”) to terminate her employment contract based upon Appellant’s job performance. The Local Board terminated Appellant’s employment contract pursuant to O.C.G.A. § 20-2-940(a) on the grounds of willful neglect of duty, and other good and sufficient cause. On appeal, Appellant contends that the Local Board’s decision is not supported by the evidence. For the reasons set forth below, the decision of the Local Board is SUSTAINED.

**I. PROCEDURAL BACKGROUND**

On or about March 19, 2010, Appellant was notified that her annual contract for the 2009-2010 school year was being recommended for termination. Appellant appealed the termination of her employment contract. The Local Board provided the Appellant a hearing with the opportunity to present evidence. After hearing the evidence, the Local Board terminated Appellant’s employment contract. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

**II. FACTUAL BACKGROUND**

In April of 1999, Appellant began her employment with the Local Board. Appellant was employed as an elementary school teacher at McDonough Elementary School. Appellant did not have any performance issues until the 2008-2009 and 2009-2010 school years. In the 2008-2009 school year, Appellant received two (2) NI (“needs improvement”) ratings on her formal observation from her Assistant Principal. The Assistant Principal found that Appellant did not give the students proper directive or instruction, that she did not provide the students with standards or essential questions, and that the entire lesson was confusing. The Assistant Principal describes the formal observation as “bad.” The Assistant Principal, on other occasions, observed Appellant’s classroom and noticed that Appellant was not at her desk a lot, and there appeared to be student behavior problems. As a result, the school administration provided Appellant with training. Appellant was also issued a letter of expectation. Nevertheless, the

Local Board issued Appellant all “S” (satisfactory) ratings on her 2008-2009 year end evaluation.

In October of 2009, Appellant received six (6) NI ratings on her formal observation from a new Assistant Principal. These ratings were primarily in the areas of assessing and encouraging student progress. The new Assistant Principal describes her observations of Appellant’s classroom as very chaotic, children were isolated, the instructional level was not up to par, and the lesson plan was unorganized. These concerns centered on the lack of promoting student engagement and support. As a result, Appellant was placed on an extended phase observation. Appellant was provided specific directions for improving. Appellant was allowed to select a date for the extended phase observation. On the extended phase observation, Appellant received two (2) NI ratings.

At the hearing, Appellant’s performance issues were supported by the Math Coach and Instructional Lead Teacher. The Math Coach described Appellant’s classroom as chaotic and that her classroom management was lacking. The Instructional Lead Teacher described Appellant’s classroom as children were disruptive and not being engaged in the lesson, and instruction was lacking.

At the hearing, the Principal testified about Appellant’s poor classroom atmosphere and the lack of engagement of the students. The Principal also testified about other issues, such as Appellant’s classroom being in the media center when Appellant’s classroom should have been doing math. The Principal and Nurse testified about Appellant’s failure to adhere to a student’s 504 plan. The Principal also testified about Appellant’s lack of professionalism in her telephone conversations with parents and the maintenance of a behavior record. The Principal further testified that the breaking point was Appellant’s failure to timely turn in SST referrals for two (2) students. Nevertheless, the Local Board issued Appellant all “S” (satisfactory) ratings on her 2009-2010 year-end evaluation.

### **III. ERRORS ASSERTED ON APPEAL**

#### **A. Record Evidence.**

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 Ransom 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. 8, 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.

On Appeal, Appellant contends that she did not engage in willful neglect of her duties and that good and sufficient cause does not exist to support her termination. 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).

In this case, the record shows that Appellant had ongoing performance issues. Appellant does not dispute the majority of these performance issues. Appellant received a negative observation during the 2008-2009 school year and subsequent instruction in order to improve her performance. Despite the assistance, Appellant did not improve. Rather, the next formal observation in the 2009-2010 school year was worse. Appellant's extended phase observation showed some improvement, but she still received a negative observation. The record further shows that Appellant did not follow policies regarding a student's 504 plan and in timely turning in SST referrals for two (2) students. In short, the record contains evidence that Appellant was not effective as a teacher. The record shows documented performance issues, which are more than mere negligence.

Appellant further contends that she suffered from a disability and was cooperative in attempting to improve her performance. Appellant's contention that she suffers from a disability and her termination violates the ADA is not supported by the record evidence. Furthermore, while Appellant may have been cooperative in attempting to satisfactorily perform her job as a teacher, the record evidence supports the Local Board's decision that she failed to do so. Thus, the decision of the Local Board must be upheld by this Board.

#### **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 July 2010.

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MARY SUE MURRAY  
VICE CHAIR FOR APPEALS