

STATE BOARD OF EDUCATION

STATE OF GEORGIA

KIMBERLY JOHNSON,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2011-13
	:	
DECATUR CITY SCHOOL	:	DECISION
SYSTEM,	:	
	:	
Appellee.	:	

This is an appeal by Kimberly Johnson from a decision by the Decatur City School System (“Local Board”) to non-renew her employment contract for the 2010-2011 school year. The Local Board charged Appellant with incompetence and willful neglect of duties pursuant to O.C.G.A. § 20-2-940(1) & (3). The Local Board terminated Appellant based upon incompetence. On appeal, Appellant challenged the sufficiency of the evidence supporting the Local Board’s decision that Appellant is incompetent. For the reasons set forth below, the decision of the Local Board is **SUSTAINED**.

I. PROCEDURAL BACKGROUND

On or about June 4, 2010, Appellant was notified that her annual contract for the 2010-2011 school year was being recommended for non-renewal. Appellant appealed the non-renewal recommendation 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 non-renewed Appellant’s employment contract on the grounds of incompetency. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was employed as a teacher for approximately twelve (12) years with the Local Board. Appellant taught kindergarten at the College Heights Early Childhood Learning Center (“College Heights”). During her years of employment, the Appellant received satisfactory performance reviews, including the 2008-2009 school year. Commencing in the 2008-2009, College Heights implemented a new Pre-K curriculum called Opening the World of Learning (“OWL”). The OWL curriculum is highly structured, scripted, and more rigorous than the curriculum previously used at College Heights. Appellant was provided training regarding the OWL curriculum during the 2008-2009 and 2009-2010 school years.

On December 2, 2009, Appellant received a satisfactory rating on the Georgia Teacher Duties and Responsibilities Instrument (“GTDR”) portion of her annual evaluation from her Principal. On March 23, 2010, the Principal placed Appellant on a Performance Development Plan (“PDP”). The Principal’s concerns were related to Appellant’s ability to competently plan, implement, and deliver the OWL curriculum, to provide a positive classroom environment, and to work cooperatively with others. Under the PDP, Appellant was required to conduct two peer classroom observations and submit timely and detailed lesson plans to the Principal.

At the hearing, the Principal testified that she observed Appellant on at least four occasions. During these observations, the Principal continued to observe the same deficiencies in the planning, implementing, and delivering of the OWL curriculum. Appellant also failed to turn in timely and detailed lesson plans. The Appellant also failed to complete the two peer classroom observations.

The Literacy Coach also testified at the hearing. The Literacy Coach testified that he observed deficiencies in the Appellant’s preparation and delivery of the lessons. The Literacy Coach concluded from his observations of Appellant that she was not improving in her ability to implement the OWL curriculum after two years, and that he did not believe she was capable of improving. The Literacy Coach discussed his concerns with the Principal. The Principal recommended that Appellant's employment contract for the year 2010-2011 school year not be renewed.

III. ERRORS ASSERTED ON APPEAL

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. 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 the evidence does not support a finding of incompetence. Incompetence is defined as the lack of ability, legal qualification, or fitness to perform the assigned job duties. West v. Habersham County. Bd. of Educ., Case No. 1986-53 (Ga. SBE, Feb. 1987). Incompetence is also defined as 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. 1994). Thus, a finding of incompetence means that Appellant did not willfully fail to perform her duties.

In this case, the record shows that the Principal placed Appellant on a PDP. The Principal's concerns were related to Appellant's ability to competently plan, implement, and deliver the OWL curriculum, to provide a positive classroom environment, and to work cooperatively with others. Under the PDP, Appellant was required to conduct two peer classroom observations and submit timely and detailed lesson plans to the Principal. The Principal observed Appellant on at least four occasions. During these observations, the Principal continued to observe the same deficiencies in the planning, implementing, and delivering of the OWL curriculum. Appellant also failed to turn in timely and detailed lesson plans. The Appellant also failed to complete the two peer classroom observations.

The Literacy Coach also testified that he observed deficiencies in the Appellant's preparation and delivery of the lessons. The Literacy Coach concluded from his observations of Appellant that she was not improving in her ability to implement the OWL curriculum after two years, and that he did not believe she was capable of improving. Thus, there is evidence in the record to support the decision of the Local Board.

On appeal, Appellant's primary contention is that the Local Board erred because it failed to comply with O.C.G.A. § 20-2-210 by failing to issue Appellant a performance review. However, O.C.G.A. § 20-2-210 does not create any additional substantive or procedural rights for a teacher. See Main v. Greene County Bd. of Educ., Case No. 1991-9 (Ga. SBE, April 1991); Hanson, Case No. 1994-53. Thus, even if the Local Board failed to comply with O.C.G.A. § 20-2-210, this section does not prohibit the non-renewal of a teacher. See Grigsby v. DeKalb County Bd. of Educ., Case No. 2009-62 (Ga. SBE, Oct. 2009); Williams v. Grady County Bd. of Educ., Case No. 2011-02 (Ga. SBE, Sep. 2010).

Appellant further contends that the observations reflect overall satisfactory reviews based upon the number of "Needs Improvement" scores compared to the number of "Satisfactory" scores. However, the record shows that Appellant continued to receive some "Needs Improvement" scores on the observations. This evidence is sufficient to support the decision of the Local 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 November 2010.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS