

**STATE BOARD OF EDUCATION
STATE OF GEORGIA**

CALVIN KING,	:	
	:	
Appellant,	:	
	:	
v.	:	CASE NO. 2012-07
	:	
WORTH COUNTY BOARD OF EDUCATION,	:	DECISION
	:	
	:	
Appellee.	:	

This is an appeal by Calvin King from a decision by the Worth County Board of Education (“Local Board”) to non-renew his employment contract. The Local Board did not renew Appellant’s employment contract finding that he engaged in insubordination, willful neglect of duty, incompetency, and other good and sufficient cause. On appeal, Appellant asserts that the Local Board erred by admitting into evidence various allegations and performance issues which had occurred six (6) to eight (8) years ago, and on the grounds that the notice was overly broad by including conduct from prior contract years. For the reasons set forth below, the decision of the Local Board is **REVERSED**.

I. PROCEDURAL BACKGROUND

In April of 2011, Appellant was notified that his annual contract for the 2011-2012 school-year was being recommended for non-renewal. Appellant appealed the recommendation of non-renewal of his 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. Appellant has appealed the decision of the Local Board to the State Board of Education (“State Board”).

II. FACTUAL BACKGROUND

Appellant was a teacher with the Local Board for approximately sixteen (16) years. For the 2010-2011 school-year, Appellant was the teacher for the In School Suspension ("ISS") program at Worth County Middle School. The notice served by the Local Board stated that Appellant’s non-renewal was based upon a physical altercation with a student, inadequate performance, classroom management, and failure to follow protocol and directives from administrators. During the 2010-2011 school-year, Appellant was placed on a Professional Development Plan.

In addition, the notice states that Appellant had “these type of problems for the past eight years”, and identified reprimand letters and Professional Development Plans from prior contract years. At the hearing, the Local Board offered evidence regarding Appellant’s conduct for prior academic years of 2002-2003, 2003-2004, and 2004-2005. Appellant objected to the evidence regarding the performance evaluations, letters of reprimands, and conduct from the prior years. The hearing officer admitted the evidence without any limiting instruction. The Superintendent testified that she considered the letters of reprimand and poor evaluations from 2003, 2004 and 2005 “in making a determination not to recommend” Appellant for the renewal of his contract. The Superintendent further testified that the prior evaluations “were given equal weight because it’s a cumulative evaluation process.”

III. ERRORS ASSERTED ON APPEAL

A. Admission of Evidence of Prior Year Performance and Conduct.

On appeal, Appellant asserts that the Local Board erred by admitting into evidence the various allegations which had occurred six (6) to eight (8) years ago, and on the grounds that the notice was overly broad. This Board agrees. This Board has held that a local board cannot non-renew or terminate an employee under the Fair Dismissal Act based on events that occurred before the contract was issued. See Peterson v. Brooks County Bd. of Educ., Case No. 1990-29 (Ga. SBE, Aug. 1999), rev'd on other grounds Brooks County Bd. of Educ. v. Peterson (Superior Court of Brooks County; Civil Action No. 91-CV-43). In Peterson this Board held that evidence of incidents that occurred in prior contract years cannot be used to recommend against renewal in a subsequent contract year, but can only be used for the purpose of establishing a course of conduct. Id. The Georgia Court of Appeals followed this Board’s holding in Peterson in Moulder v. Bartow County Bd. of Educ., 267 Ga. App. 339 (2004).

In this case, while the Local Board relied upon some incidents within the contract year, the Superintendent testified that she gave equal weight and consideration to performance issues which occurred during prior contract years. After each of these years, Appellant was awarded a new employment contract. At the hearing, Appellant objected to the evidence regarding the performance evaluations, letters of reprimands, and conduct from the prior years. However, the hearing officer admitted the evidence without any limiting instruction that the prior incidents were being admitted only for the purpose of establishing a course of conduct. Based upon the testimony of the Superintendent, it is clear that the evidence was not offered for the limited purpose of establishing a course of conduct. To the contrary, the prior year issues were given equal weight and consideration in the Superintendent’s decision to non-renew Appellant. By doing so, the Local Board acted directly in contradiction to the mandate of Peterson and Moulder. Thus, this Board concludes that the Local Board erred in its decision to non-renew Appellant’s contract.

IV. CONCLUSION

Based upon the reasons set forth above, it is the opinion of the State Board of Education that the evidence does not support the decision of the Local Board and it is, therefore, **REVERSED**.

This _____ day of January 2012.

MARY SUE MURRAY
VICE CHAIR FOR APPEALS