

**STATE BOARD OF EDUCATION**

**STATE OF GEORGIA**

**MARCUS SCOTT,** :  
 :  
 **Appellant,** :  
 :  
 **vs.** : **CASE NO. 2007-23**  
 :  
 **LIBERTY COUNTY** :  
 **BOARD OF EDUCATION,** :  
 : **DECISION**  
 **Appellee.** :

This is an appeal by Marcus Scott (Appellant) from a decision by the Liberty County Board of Education (Local Board) to terminate his teaching contract based upon charges of immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. Appellant claims that case law prevents his dismissal and terminating him for conduct that occurred many years ago in his private life denies him equal protection and due process of law. The Local Board’s decision is sustained.

In 1999, Appellant was a 20-year old sophomore student in college. Occasionally, he served as a substitute teacher in both Long County and Liberty County. Appellant’s next door neighbor was a 15-year old female student in Liberty County. The two engaged in sexual intercourse and the female student became pregnant. The two of them married in April 2000 and a baby was born in June 2000. In January 2001, Appellant and his wife divorced and Appellant obtained custody of their child.

Appellant went on to complete college and the Local Board employed him as a teacher in January 2003. On August 24, 2006, the Local Superintendent received a telephone call from Appellant’s former wife, who explained that she was only 15 years old when Appellant had sexual relations with her and she was a student in one of the classes he taught. The Local Superintendent recommended termination of Appellant’s teaching contract because of immorality and other good and sufficient cause under the provisions of O.C.G.A. § 20-2-940. On October 16, 2006, the Local Board held a hearing on the charges.

Appellant moved to dismiss the charges based upon the court’s decision in *Moulder v. Bartow Cnty. Bd. of Educ.*, 267 Ga. App. 339, 599 S.E.2d 495 (2004). The hearing officer permitted the hearing to go forward and then ruled that *Moulder* did not apply and did not require dismissal of the charges. Appellant claims that *Moulder* is controlling and the charges should have been dismissed.

In *Moulder*, the court upheld the State Board of Education’s decision in *Moulder v. Bartow Cnty. Bd. of Educ.*, Case No. 2003-07 (Ga. SBE, Nov. 14, 2002), which held that evidence of conduct that occurred before a contract was signed could not be used as

the basis for non-renewal in a subsequent year. Appellant argues that *Moulder* prevents the introduction of any evidence of conduct that occurred seven years ago and before any of his contracts with Liberty County were signed. The instant case, however, is distinguishable from *Moulder* because the Local Board was unaware of Appellant's actions, whereas the local board in *Moulder* was aware of the conduct before renewing the teacher's contract. One reason for not permitting prior conduct as evidence in a later dismissal or nonrenewal proceeding is to prevent political considerations, such as personality differences, from condemning previously approved actions. If there is no knowledge of those previous actions, there cannot have been previous approval of them and the reason for rejecting them as the basis for nonrenewal or termination no longer exists. Although Appellant presented evidence that the school administration was informed of the incident in 1999, there was also evidence that the Local Superintendent was unaware of the incident until August 2006. The State Board of Education concludes that *Moulder* is not applicable and there was evidence that Appellant engaged in an immoral act by having sexual intercourse with a female under the age of 16.

Appellant also claims that termination of his contract for conduct that occurred in his private life constitutes a denial of equal protection and due process. Appellant's claims are based upon his reliance on *Moulder*. As stated above, however, *Moulder* is inapplicable to the facts in the instant case. In *Moulder*, the local board was aware of the teacher's actions and, nevertheless, chose to renew the teacher's contract. Later, the local board sought to terminate the teacher's contract based upon the teacher's actions it had previously approved by issuing her a contract. Both the principal and the Local Superintendent in the instant case testified that they were unaware of Appellant's conduct.

The State Board of Education has consistently held that there is no requirement for establishing a nexus between a teacher's private actions that involve moral turpitude and the teacher's ability as a teacher. *See, Williams v. Gwinnett Cnty. Bd. of Educ.*, Case No. 1992-14, (Ga. SBE, Sep. 10, 1992); *Logan v. Warren Cnty. Bd. of Educ.*, Case No. 1981-39 (Ga. SBE, Feb. 11, 1982). Appellant has not presented any basis for changing this position. Accordingly, the State Board of Education concludes that the Local Board did not need to establish a nexus between Appellant's actions and his teaching ability.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the Local Board did not deny Appellant equal protection or due process. Accordingly, the Local Board's decision is  
SUSTAINED.

This \_\_\_\_\_ day of March 2007.

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William Bradley Bryant  
Vice Chairman for Appeals