

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM HORRY COUNTY
Court of Common Pleas**

The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant

v.

HORRY COUNTY SCHOOLS.....Respondent

APPENDIX TO RECORD ON APPEAL

<p>W. Allen Nickles, III, S.C. Bar No. 4226 Susan M. Fittipaldi, S.C. Bar No. 14225 NICKLES LAW FIRM, LLC 1519 Richland Street Columbia, SC 29201 (803) 779-8080</p> <p>wanickles@nickleslaw.com sfittipaldi@nickleslaw.com</p> <p><i>Attorneys for Appellant</i></p>	<p>Kathryn Long Mahoney, S.C. Bar No. 65332 John M. Reagle, S.C. Bar No. 14185 Vernie L. Williams, S.C. Bar No. 9511 CHILDS & HALLIGAN, P.A. PO Box 11367 Columbia, SC 29211 (803) 254-4035</p> <p>kmahoney@childs-halligan.net jreagle@childs-halligan.net vwilliams@childs-halligan.net</p> <p><i>Attorneys for Respondent</i></p>
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SC Court of Appeals

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Jacqueline Smith,
Complainant,
vs.
Horry County Schools,
Respondent.

C.A. No. 2011-CP-26-3689

ANSWER AND RETURN

2011 MAY -14 PM 12:47
CLERK OF COURT
Horry County

The Respondent, responding to the appeal of Appellant, would respectfully show unto the court:

The Respondent denies each and every allegation of the appeal of the Appellant herein.

Wherefore, the Respondent, having fully answered the appeal of the Appellant, prays that the same be dismissed with costs.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

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Attorneys for Respondent

May 3, 2011
Columbia, South Carolina

in one or more specifically named school activities which will occur within the nighttime restriction period, thereby creating a transportation problem for the student.

After checking the SCDMV's website for the current regulation, the school official writing such a letter should:

- Require the parent to submit a written request for the letter;
- After writing a letter addressed to the SCDMV, have the letter notarized and give it to the parent (keep a copy and file it in the student's cumulative record along with the parent's written request);
- Should state the reason for the waiver in the notarized statement:
 [Example: Johnny Driver is a member of our high school marching band; therefore, he is required to participate with the band at evening sports events and band competitions];
- Avoid making any recommendation as to whether or not the SCDMV should grant a waiver;
- Have the principal or his/her designee sign or co-sign the statement (although the SCDMV only requires a "school official" to sign the statement).

Legal reference.

State.

S.C. Code § 56-1-180 – Special restricted licenses for certain minors.

Adopted: 7-1-04.

Grievances Filed by Students

The District has established a grievance procedure as a formal method for the positive and productive resolution of grievances concerning the treatment of students by District personnel. Grievances may consist of allegations of violations of District policies or legal rights including, but not limited to, harassment or discrimination based on race, sex, color, religion, national origin, age, disability, immigrant status, English-speaking status, or any other characteristic protected by applicable federal or S.C. law. The decision of the principal shall be final: (1) in matters concerning the lawful assignment of students to classes and/or teachers and (2) in grade disputes except that grade disputes are grievable within one month of the posting of a final grade (see "Grading and Academic Performance" and "Grievances Filed by Parents and Other Community Members").

A student (grievant) who wishes to file a grievance should comply with the following procedure:

1. The grievance should be brought to the attention of a teacher or administrator who will provide the student and/or his/her parent the opportunity to discuss a decision or situation which the student considers unjust or unfair.
2. If the grievance remains unresolved, the student, his/her parent, or the teacher or administrator may bring the matter to the principal's attention for consideration and action.
3. A student may bring a school-wide matter, when appropriate, to the attention of class officers or the student council for possible presentation to the principal.
4. If the matter remains unresolved after the procedure outlined above, the student may bring the issue to the Superintendent or his/her designee for consideration except the decision of the principal shall be final in matters concerning lawful non-selection of students for, and lawful dismissal of students from, extra-curricular activities such as, but not limited to, athletic teams, cheerleading, National Honor Society, mock trial teams, and clubs.
5. If the student is dissatisfied with the decision of the Superintendent or his/her designee, the student may file an appeal with the Board. Such an appeal must be in writing and filed with the Superintendent within ten working days following receipt of the decision of the Superintendent or his/her designee. The Superintendent will present the request for a grievance appeal to the Board at its next regularly scheduled meeting.

A grievance hearing before the Board lies within the sole discretion of the Board. The student will be notified within a reasonable time of the Board's decision regarding whether or not it will hear the appeal. Should the Board decide to hear the appeal, the meeting will be informal and non-adversarial.

A homeless student has additional rights if the Board's decision is unacceptable to him/her – see "Homeless Students."

Title VI, Title IX, Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act

The grievance procedures set forth above are to be used to process student complaints based on alleged violations of Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments Act of 1972; Section 504 of the Rehabilitation Act of 1973; and Title II of the Americans with Disabilities Act of 1990, referred to collectively as "civil rights grievances."

In the event that a student files a grievance alleging violation of one of the above-referenced laws, the grievance shall be considered to be a "formal" grievance for purposes of these procedures.

With respect to alleged violations of Title VI, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Civil Rights Coordinator, Kenneth Generette, Staff Attorney, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6700. With respect to alleged violations of Section 504 or the Americans with Disabilities Act, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Coordinator of Special Services, Mrs. Mollie Laut, Director of Special Education, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6700. With respect to alleged violations of Title IX, if the response of the District-level administrator does not resolve the grievance to the satisfaction of the student, the student may appeal in writing to the District's Title IX Coordinator, Mr. Paul Hickman, Principal Specialist, 335 Four Mile Road, Conway, SC 29526, telephone: 488-6733.

If the student fails to appeal within 15 working days of receipt of the written response from the District-level administrator, the right to appeal is waived. If an appeal is made to any of the above-referenced Coordinators, the Coordinator may conduct further investigation, if necessary. The Coordinator shall hold a hearing with the student within 15 working days of receipt of the grievance, or within 15 working days of completion of any further investigation, if necessary. The Coordinator shall then render a decision on the matter in writing within 15 working days after the hearing is conducted.

After appeal to the appropriate Coordinator, a student may request a meeting with the Board for the purpose of discussing his/her grievance. The request must be made in writing to the Superintendent within ten working days of the Coordinator's response to the grievance. The Superintendent will, at the next regularly scheduled Board meeting, present the request that the grievance be heard, together with copies of all correspondence and responses from the lower administrative levels.

A grievance hearing before the Board lies within the sole discretion of the Board. The student will be notified within ten working days of the Board decision regarding whether or not it will hear the appeal. Should the Board decide to discuss the grievance with the student, the meeting will be informal and non-adversarial.

Revised: 7-1-02; 7-1-03; 6-15-05; 2-17-06; 3-24-06; 6-19-06; 7-1-07; 7-1-09.

Grievances Filed by Parents and Other Community Members

Situations may arise in the operation of the District which are of concern to parents or other community members. Concerns should be resolved at the lowest possible level of decision making by the individuals closest to the concern; therefore, concerns are best dealt with through communication with the appropriate staff members, such as teachers, principals, and administrators. The decision of the principal shall be final: (1) in matters concerning the lawful assignment of students to classes and/or teachers and

1 MR. CURLEE: Ed Curlee, C-U-R-L-E-E.

2 MR. CURLEE - EXAMINATION BY MS. MAHONEY:

3 Q: Mr. Curlee, if you would, please state your
4 name for the record.

5 A: Ed Curlee.

6 Q: What is your position with the District?

7 A: I'm the executive director for human resources.

8 Q: I wanted to see if you were listening. How
9 long have you been executive director for human
10 resources?

11 A: This is my fifth year.

12 Q: And how many total years of experience do you
13 have in education and in what capacities?

14 A: I think this is my 33rd year in education and
15 during that tenure I have served as a
16 principal, assistant principal, executive
17 director for secondary education and then my
18 current position.

19 Q: In the interest of efficiency and the Board's
20 patience, I'm going to cut right to the chase.
21 When is the first time you had to deal with an
22 issue involving Jacqueline Smith in the
23 District, please?

24 A: The first time that I was involved with Ms.
25 Smith would have been in the 2007-2008 school

1 year when Ms. Smith was employed at North
2 Myrtle Beach Intermediate School.

3 Q: And what caused you to become involved with her
4 at that point?

5 A: I was actually in communication pretty much
6 throughout that year with the principal, Ms.
7 Graham, concerning some issues that she was
8 having with Ms. Smith's performance, Ms.
9 Smith's, some of her behaviors or
10 communication. There were several issues that
11 she and I had talked informally about.

12 Q: And what did you then -- did you ever any
13 direct contact with Ms. Smith during that 2007-
14 08 school year about any of these concerns?

15 A: I did. Actually, we were trying to work with
16 Ms. Graham. There were several issues that she
17 was trying to address with Ms. Smith and she
18 was attempting to meet with Ms. Smith and had
19 attempted on several occasions to schedule a
20 meeting with Ms. Smith. And Ms. Smith for
21 whatever reason, there were reasons given that
22 she had not met with the principal. And the
23 reason for the meeting was to discuss a number
24 of parent complaints that the administration
25 was receiving and also to discuss some of the

1 issues that had been brought to the
2 administration's attention. I went to the
3 school at the direction of the then
4 superintendent, Dr. Bobby Nalley, to make sure
5 Ms. Smith knew that a meeting was scheduled
6 with the administration and also I believe the
7 curriculum coach. The purpose of that meeting
8 was to address the concerns and to talk about
9 strategies. And I had received word from the
10 principal that there is still concern that Ms.
11 Smith was not willing to meet.

12 Q: So what did you do then?

13 A: I went to the school to make sure that Ms.
14 Smith understood that the importance of the
15 meeting and that it certainly was the
16 principal's prerogative to call a meeting. I
17 actually went to her classroom along with the
18 assistant principal, Mr. Prince, and had a
19 conversation with Ms. Smith to make sure that
20 she knew the importance of the meeting and also
21 the fact that she really needed to be in the
22 meeting that afternoon. And I delivered that
23 message.

24 Q: How did Ms. Smith respond to that message?

25 A: Ms. Smith became upset with me. She told me

1 that she actually was not going to stay
2 initially. Then she took out her cell phone
3 and made a cell phone call and I asked her to
4 put the cell phone up. That I just wanted to
5 make sure that she understood while I was
6 there. She did put the cell phone up finally
7 and I explained to her the importance of the
8 meeting and that it was really necessary for
9 her to be a participant in the meeting. And
10 tell her if she did not, it could be perceived as
11 she was being insubordinate. I also shared
12 with her that the principal had made several
13 attempts to schedule the meeting
14 unsuccessfully. She then went, after a brief
15 conversation with me and Mr. Prince, the
16 assistant principal, she went to the telephone,
17 a land line, and picked it up and called
18 someone. She talked briefly on the phone and
19 then asked me to come to the phone. I
20 explained to her that I was not there to have
21 a conversation with anyone except her and that
22 we needed to proceed with Ms. Graham with the
23 meeting. She then talked on the phone briefly
24 and hung the phone up and I asked her if there
25 were any more questions and at that point in

1 time, I left and Ms. Graham and I believe the
2 curriculum coach along with Mr. Prince, the
3 assistant principal, proceeded with the
4 meeting.

5 Q: What happened at the end of that meeting or
6 shortly thereafter?

7 A: Ms. Graham called me later on that afternoon to
8 let me know that Ms. Smith did come to the
9 meeting. She did not participate. She refused
10 to sit with the rest of the individuals in the
11 meeting and when questions were put on the
12 table, she would not respond or if she did, it
13 was a yes or no answer, short answer. And Ms.
14 Graham called me somewhat frustrated after the
15 meeting because obviously nothing had been
16 accomplished as far as what they had intended
17 it for and that was discussion about concerns
18 and developing strategies in how to deal with
19 it. After she had called me, I contacted my
20 supervisor, Mr. Riddle, and we had a
21 conversation with Dr. Nalley and made the
22 decision that based on the things that had
23 taken place and Ms. Smith's response, that we
24 placed her on administrative leave effective
25 the next day. The next morning, I went back to

1 North Myrtle Beach Intermediate School and met
2 with Ms. Smith the first thing in the morning
3 and explained to her what we were doing from
4 the administration's perspective and I'm
5 talking about the District's administration,
6 why we were doing it and also gave her
7 communication at that time which did place her
8 on administrative leave with pay while we
9 conducted an investigation into some of the
10 accusations and allegations that had been
11 presented.

12 Q: Okay. Was that a pretty unusual measure to
13 place a teacher on administrative leave?

14 A: Well, I won't say that it's unusual, but I will
15 say that we don't place a lot of teachers on
16 administrative leave but if it's like a very
17 serious situation, obviously, and to be able to
18 take that step I think to us is a very serious
19 matter.

20 Q: Then if you would turn to tab ten, please.
21 It's the black notebook - -

22 A: You said ten?

23 Q: -- in front of you, if you'd turn to tab ten,
24 please.

25 A: That's the February 26 letter, is that correct?

1 Q: Correct. Before we talk about that, after Ms.
2 Smith was placed on leave, what happened next?

3 A: Basically after Ms. Smith left that day, we
4 then notified Mr. Hickman and Mr. Paul Hickman
5 who works at the District Office, the
6 administrative team who works with our
7 department, the HR department, to conduct
8 interviews. We contacted Mr. Hickman and asked
9 him if he would to be in communication with Ms.
10 Graham, that there were some concerns that had
11 been shared with us about a teacher and
12 identified the teacher and asked him at that
13 point in time to conduct an investigation.

14 Q: And after the conclusion of all that, what
15 happened with Ms. Smith's employment?

16 A: Actually, it was our decision for several
17 reasons that we would move Ms. Smith and Ms.
18 Smith was reassigned to Carolina Forest
19 Elementary School and I believe that was in the
20 latter part of February that we met with her
21 and discussed the assignment. There were
22 numerous reasons for the move, but the biggest
23 concern we had at this point in time was the
24 relationship, somewhat hostile relationship,
25 that we perceived existed between the principal

1 and in this case, Ms. Smith. And that was
2 somewhat confirmed by the investigation that
3 Mr. Hickman had completed.

4 Q: Behind tab ten, the letter dated February 26,
5 2008, which you said that summarized the
6 concerns we discussed with her and ultimately
7 the reassignment?

8 A: Yes, ma'am, that's the letter that I sent to
9 Ms. Smith and that was after we actually met
10 with Ms. Smith and discussed reassignment. I
11 believe that was on the 20th or 21st of
12 February and this letter basically summarized
13 our concerns and also included some of the
14 findings of Mr. Hickman's investigation.

15 Q: And in February of 2008, who was the
16 superintendent of Horry School District at that
17 time?

18 A: That would have been Dr. Bobby Nalley and he
19 was serving as interim superintendent.

20 Q: Dr. Elsberry wasn't here yet, is that correct?

21 A: That's correct.

22 Q: So the remainder of the 2007-08 school year,
23 Ms. Smith was at Carolina Forest Elementary
24 School. Was she assigned a class of students
25 for the remainder of that school year?

1 A: No, it was my understanding Ms. Smith was
2 actually assigned to work with students on a
3 pull-out basis. We actually felt that position
4 and we had that position at a lot of schools
5 initially, Ms. Smith, she was actually, based
6 on my understanding, working with groups of
7 students who were deficient in some areas and
8 she was providing instruction to help mediate
9 their deficiencies.

10 Q: Where was Ms. Smith assigned to teach during
11 the 2008-09 school year?

12 A: After the conclusion of the year at that
13 school, we assigned Ms. Smith to Ocean Bay
14 Middle School. We actually made that
15 assignment for several reasons. One, Ocean Bay
16 Middle School was experiencing tremendous
17 growth and they had several vacancies. Ms.
18 Smith had also made a request the previous year
19 that she would like to be considered for a
20 transfer into the middle school grade area. I
21 think at the time she specifically pointed out
22 several years in the Conway area. Carolina
23 Forest is not that far away. Carolina Forest,
24 excuse me, Conway and we had vacancies there in
25 ELA so we made the decision to assign Ms. Smith

1 to Ocean Bay Middle School as an ELA teacher.

2 Q: Now, was Ms. Smith placed on a formal
3 evaluation for the 2008-09 school year when you
4 assigned her to Ocean Bay Middle School?

5 A: She did leave, but she was not placed on a
6 formal evaluation. There was an assistance
7 plan that Ms. Graham had tried to put in place
8 in the 06-07 year and I believe she did put
9 that plan in place and part of Ms. Smith, I
10 believe, when she was reassigned, part of that
11 understanding was that she would have
12 additional assistance when she moved to
13 Carolina Forest but when she went to Ocean Bay
14 Middle School, to answer your question, no.

15 Q: Was that an option to put her on formal
16 evaluation?

17 A: Not really because putting someone on formal
18 evaluation is a process and there are certain
19 procedures that have to be followed. The fact
20 that she was reassigned in February to Carolina
21 Forest Elementary School and then reassigned
22 again to Ocean Bay Middle School certainly
23 would have disrupted the process of procedures.
24 Normally we notify teachers when they receive
25 their contract if they're going to be put on

1 A: I can only give you my opinion. Some of the
2 concerns and complaints that we were having to
3 me were not necessarily those that would be
4 addressed by a formal evaluation. A formal
5 evaluation process through ADEPT in the South
6 Carolina Department of Certification for
7 teacher certification actually focuses on a lot
8 of areas but some of the most important areas
9 is what was taking place with instruction and
10 those type activities. The issues that we were
11 dealing with Ms. Smith at that point in time
12 were the concerns we had of perception of
13 insubordination, her comments of whatever that
14 she was making to parents , whatever those
15 relationship pieces. Those were the issues
16 that we had. So I'm not really sure that
17 putting her on a formal evaluation would have,
18 from my perspective, been the appropriate
19 measure.

20 Q: The 2008-09 school year, she's at Ocean Bay
21 Middle School. How did things go that year?
22 Who was the principal, Connie Huddle?

23 A: Connie Huddle was the principal and I believe
24 after a week, possibly two weeks, Ms. Huddle
25 called our office and said that she was having

1 numerous complaints from parents about one of
2 her teachers and she didn't really know that
3 much about the teacher. And she went on to
4 share with me that the teacher was Ms.
5 Jacqueline Smith. And I asked her basically
6 what kind of concerns or complaints and she
7 started out outlining to me, outlining to me
8 the fact that students were not understanding
9 assignments, the parents did not understand the
10 grades and a lot of times grades were not being
11 placed properly or not being reported. And I
12 think there was some general confusion or I
13 guess more than anything else students were
14 going home and complaining they didn't know
15 what to do and some of them even to the point
16 that they were afraid to go to class. And Ms.
17 Huddle shared these thoughts with me and we
18 talked about them briefly and at that point in
19 time, she shared with me what she was doing to
20 address the concerns and that was to talk with
21 Ms. Smith and certainly parents requested to
22 set up conferences.

23 Q: After the conclusion of the 2008-09 school
24 year, where did Ms. Smith teach after that?

25 A: Actually, Ms. Smith was, of course, at Ocean

1 Bay Middle for that year and then at the
2 conclusion of that year, we actually had a
3 conversation with Ms. Huddle, the principal,
4 and talked about the things that had occurred
5 that year. And there had been several
6 situations that had occurred throughout the
7 year, the students being moved from the class
8 at parents' requests or whatever in an effort
9 to try to help both Ms. Smith and certainly the
10 parents with their expectations as far as
11 school was concerned. Ms. Huddle and I
12 discussed the possibility of putting Ms. Smith
13 in some type of an assistance plan or
14 evaluation for the next year. And at that
15 point in time, the School District was
16 developing and implementing a new language
17 program and I'm sorry, I don't know the name of
18 the program, but Ms. Huddle said that it was a
19 very scripted program, one that required a lot
20 of details and procedures that were in place
21 that had to be followed and she thought it
22 might be an excellent opportunity for Ms. Smith
23 to work with that program at Ocean Bay Middle
24 School. So she, after our discussion she then
25 met with Ms. Smith and discussed that and let

1 her know that she was going to be putting her
2 in charge of that program. That program also
3 come with the idea she would be trained for the
4 program as a program being put in, I believe,
5 all the middle schools, not just Ocean Bay.
6 Ms. Smith was very upset about the assignment.
7 She wrote a lengthy letter saying that she
8 didn't think it was fair and that she basically
9 did not want to participate in that program or
10 at least be the person responsible for that
11 program. But anyway, she did. School started
12 the next year, she was still at Ocean Bay
13 Middle School at that point in time. Each
14 time, and I'll be very brief, each year we look
15 at the enrollment the first two weeks of school
16 and Ocean Bay Middle School's enrollment had
17 dropped substantially and Ms. Huddle had to
18 reduce their staff in a couple of positions.
19 And in looking at the process and procedures,
20 Ms. Smith being one of those individuals that
21 would be moved, we had a need for an ELA
22 teacher at Conway Middle School. So on or
23 around the second week of school when we were
24 making some changes, Ms. Smith was moved to
25 Conway Middle School.

1 somewhere along I shared that we've actually
2 placed Ms. Smith in several different locations
3 under different principals with different
4 leadership styles. Students have some
5 similarities but in different parts of the
6 District but yet we were still seeing some of
7 the initial problems that we had at North
8 Myrtle Beach Intermediate School in all of the
9 other locations as well. At this point in time
10 after her being moved and this was the fourth
11 time, four schools she had been in just four
12 years, we were somewhat concerned as to what we
13 could do. And during that time, we had various
14 forms of assistance that had been given or
15 offered to Ms. Smith to try to assist her in
16 certainly becoming more effective to address
17 some of the concerns that we were getting from
18 the parents and complaints. But from my
19 perspective in my dealings with Ms. Smith, Ms.
20 Smith would never acknowledge that there were
21 any issues. When I met with her, she
22 consistently said that she was unaware of any
23 problems, that if there were problems with
24 parents, the parents should be sent to her and
25 she would deal with it. But basically she was

1 aware that there were problems and if you'd
2 look at the e-mails that were going back and
3 forth between Ms. Smith and the administration,
4 you'd know that she was aware that there were
5 complaints coming in on a regular basis.
6 Additionally, in talking with all three
7 principals at different times in reference to
8 send me the parents, follow up procedures,
9 these were comments that Ms. Smith was making.
10 That was tried, but what happened on numerous
11 occasions that as soon as Ms. Smith met with
12 them, the parent then would go call the
13 principal and demand a meeting, in some cases
14 demand the child to be taken out of the class.
15 So for these reasons and the patterns that I
16 mentioned earlier, and the fact that we had
17 tried in this case four different schools and
18 we we're still having these problems, I think
19 you can see what our problems were as far as
20 continuing with her employment.

21 Q: Thank you. Please answer any questions Mr.
22 Mazyck may have.

23 MR. CURLEE - EXAMINATION BY MR. MAZYCK:

24 Q: Good afternoon, Mr. Curlee.

25 A: Mr. Mazyck.

1 information. But I asked her about the parent
2 concerns and she said that she wasn't aware of
3 parent concerns except for the eight
4 conferences that she had had since the
5 beginning of the school year. And I asked her
6 what she would have done -- what she could do
7 differently, what could she change to address
8 the concerns that the parents were expressing
9 in the eight conferences that she was aware of
10 and she said she didn't know of anything. That
11 she was not aware of anything she could have
12 done that would have changed the concerns that
13 the parents had. And I asked her after the
14 conferences, after she heard what they had
15 shared, did she do anything differently, did
16 she change her behavior, did she change her
17 communication style and she said no, she did
18 not change anything. And I was taken aback by
19 that. I'll just have to be honest that it
20 seemed -- it sounds like I'm being dishonest.
21 I'd would like to reword that statement. She
22 -- I was taken aback that she didn't realize
23 that they -- she didn't see anything that she
24 could have done differently to allay parents
25 fears, to alleviate their concerns. She also

1 -- we also talked about the grades. I was very
2 concerned about almost half of her students
3 making D's or F's and her comment was I don't
4 know why you consider that failing. A D is not
5 a failing grade and I didn't feel like I was
6 able to communicate with her that that is not
7 acceptable. That when a teacher's students,
8 when more than almost half of them make a D or
9 an F, that is not acceptable. And I didn't --
10 I didn't get any percepti on that Ms. Smith saw
11 that that was a concern or an issue that she
12 needed to address as a teacher and that was
13 just unacceptable to me.

14 Q: Let me ask you this quest ion.

15 A: Okay.

16 Q: Did she mention during this conference that she
17 thought the district and school administration
18 was not being fair in the ir investigation? If
19 you'll turn back to the first page of your
20 letter --

21 A: Yes.

22 Q: -- at the bottom of the paragraph.

23 A: Yes.

24 Q: What do you recall about that discussion?

25 A: We talked briefly about Mr. Hickman's

1 investigation and, because she was alleging it
2 was not fair, I suggested that maybe there were
3 other people I needed to talk to. She felt
4 like Mr. Hickman's investigation didn't go far
5 enough or there were people that were not
6 heard. Who else do I need to speak with and I
7 requested that she give me names of people.
8 And she gave me none that day but indicated
9 that those would be forthcoming. As of today
10 I've received no names of any individuals that
11 I should talk with to learn more about the
12 situation that existed at Conway Middle School.

13 Q: You can go back to where you were. I didn't
14 mean to interrupt, sorry.

15 A: That's okay.

16 Q: Any other concerns from the conference that
17 stood out to you?

18 A: The conversation with the Waccamaw Mental
19 Health counselor was concerning to me and she
20 indicated that it wasn't exactly like it was
21 reported. So I gave her a chance to talk to me
22 about that conversation and what happened
23 during that conversation. And Ms. Smith
24 indicated that she did make a call during class
25 time, so I would have expected her to follow

1 that with a very urgent reason for making that
2 call. And she indicated that she called
3 because the student wasn't doing his work. I
4 could not quite figure why you would stop class
5 and go call a mental health counselor because
6 the student wasn't completing their work. That
7 just didn't resonate with me. When we talked
8 about the confidentiality, her explanation was
9 she turned her back to the class and she spoke
10 silent -- spoke quietly. Obviously she was
11 overheard because it was reported to the
12 principal.

13 Q: But did she acknowledge she made the call to
14 the counselor during class time?

15 A: Yes, she did.

16 Q: Did she acknowledge that students were present
17 in the room?

18 A: Yes, she did. On the assistance plan, again,
19 I was trying to determine does Ms. Smith know
20 of something that would be helpful to her? Is
21 there something we've overlooked. And when we
22 talked about the assistance plan that Ms.
23 Sordian had discussed with her and I asked her
24 why she wrote at the bottom of that document
25 that no plan was needed or no assistance was

1 needed, she said, I don't need any help. She
2 indicated that she said that because there were
3 no issues and there was nothing that needed to
4 be provided to her. Again, very troubling to
5 me. The allegations about yelling and raising
6 her voice, Ms. Smith denied all of that and I
7 didn't have anything to counter that with but
8 I had hoped that if she had given me additional
9 names of people that I could talk to that could
10 verify what she was saying, that that would
11 have been helpful, but she did not do that.
12 The removal of students from her class was a
13 pattern that was repeated at all three of the
14 schools that she was in and that was what the
15 parent that met with me expressed was the
16 concern that she didn't want her child to
17 remain in this class and be subjected to what
18 she was subjected to in Ms. Smith's class. And
19 I think that -- I think I've covered the main
20 points from that meeting.

21 Q: Okay. If you turn back to the bottom of page
22 three, your last paragraph there, halfway down
23 the paragraph it begins with additionally,
24 could you read that section, please?

25 A: Additionally, the documentation establishes

1 that much of the conduct described in the
2 letter you received on February 26, 2008,
3 regarding your performance at North Myrtle
4 Beach Intermediate School is reoccurring in
5 your treatment of parents, students and members
6 of the administration at Conway Middle School.

7 Q: Is there any question in your mind that this
8 letter that ultimately formed the basis of your
9 termination recommendation was including her
10 conduct at North Myrtle Beach Intermediate
11 School, Ocean Bay Middle School and Conway
12 Middle School?

13 A: No, there was no question that all three
14 schools were included.

15 Q: And does a lot of this paragraph refer to the
16 other schools as well?

17 A: Yes, I mentioned Ocean Bay Middle School also.

18 Q: After meeting with Ms. Smith on December 1st
19 when you had this conference with her where you
20 reviewed those concerns, after reviewing
21 appropriate information based on everything you
22 knew at that point to your own direct knowledge
23 did you reach a conclusion regarding what your
24 recommendation would be regarding Ms. Smith's
25 continued employment?

1 A: No, sir.

2 Q: Did anybody, I guess up until October of 2010,
3 tell you that you're in danger of losing your
4 livelihood?

5 A: Yes.

6 Q: That's what happened in October of 2010?

7 A: Uh-huh (affirmative response).

8 Q: In years past, had that happened? Now, Ms.
9 Smith, looking through these other items I see
10 contracts for several years and they start back
11 in 1999-2000. Is that when you first came to
12 work here?

13 A: To the district.

14 Q: And they asked you each year if you wanted to
15 return and you said yes?

16 A: Uh-huh (affirmative response).

17 Q: Did you mean it?

18 A: Yes, I did.

19 Q: And you see that the contract goes through and
20 all the way up to this year. Now, if your
21 principal at any of these schools had wanted to
22 put you on a special evaluation, is there a
23 process in this district that they could have
24 done that?

25 A: Yes.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM COUNTY
Horry County Court of Common Pleas

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No.: 2012-213509

JACQUELINE SMITH.....Appellant(s)

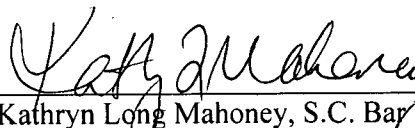
v.

HORRY COUNTY SCHOOLS..... Respondent(s).

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix to the Record on Appeal contains all additional materials proposed to be included by Respondent and not any other materials.

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