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SC Court of Appeals

**STATE OF SOUTH CAROLINA**
**ADMINISTRATIVE LAW COURT**

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| Kenneth Maxwell Pace, Jr., | ) | Docket No.: 23-ALJ-30-0360-AP |
| Appellant, | ) | |
| v. | ) | **ORDER** |
| South Carolina Department of Education, | ) | |
| Respondent. | ) | |

## STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to an appeal filed by Kenneth Maxwell Pace (Appellant). Appellant seeks review of an Order of Permanent Revocation issued by the State Board of Education (Board) revoking his educator certificates. The Court has jurisdiction over this appeal pursuant to subsection 1-23-380(B) of the South Carolina Code (Supp. 2023) and section 59-25-260 of the South Carolina Code (2020). Upon consideration of the arguments raised in the parties' briefs, a review of the record, and the applicable law, the Court affirms the Board's Order of Revocation of Appellant's educator certifications.

## BACKGROUND

During the time period of the incidents in question, Appellant was employed as an Assistant Administrator, at Ridgeview High School for Richland County School District #2 (the District). As part of his employment, Appellant assisted Principal, Dr. Brenda Mack-Foxworth (Mack-Foxworth), and the other assistant principals, including Dr. Melissa Myers (Myers) and Brandon Ross (Ross).[1] At the end of the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years, Appellant received annual evaluations from Mack-Foxworth.[2]

[1] Appellant has over fourteen years of educating experience with educator certificates, (numbers 232991 and 905110), in administration and industrial technology. Appellant testified that he continues to teach as a substitute teacher in Lexington County School Districts 2 and 5, most recently in a long-term position in an elementary school.
[2] Completion of employee evaluations is a part of Mack-Foxworth's normal job duties.

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On his 2017-2018 evaluation, Appellant received an overall positive evaluation.[3] At the end of the 2018-2019 school year, Appellant was again marked with numerous "outstandings" and "standards," but also multiple areas of "needs improvements,"[4] resulting in Mack-Foxworth placing Appellant on an improvement plan (IP) for the following school year.[5] Appellant signed the evaluation and the IP.

During 2019-2020, while on the aforementioned IP, a new position opened at Ridgeview High School. Appellant applied for the position but was not chosen. In an effort to discover which candidates moved on to the second round, Appellant accessed Myers' electronic calendar, later revealing his action to Mack-Foxworth. On May 22, 2020, Appellant had a virtual meeting with Senior Chief Human Resources Officer, Shawn C. Williams (Williams) and Mack-Foxworth to discuss Appellant's conduct related to his 2018-2019 IP and the aforementioned incident. Williams followed up with a letter to Appellant on June 11, 2020, summarizing the meeting, and setting forth certain matters of concern, specifically four incidents and Appellant's access of Myers calendar.[6] In reviewing Appellant's progress on his 2018-2019 IP, Mack-Foxworth opined that Appellant's act of accessing a co-worker's calendar to gain information for personal reasons was inappropriate and gave rise to a violation of Board policy, specifically, GCO Evaluation of Administrative Staff and GBEB Staff Conduct.[7] As a result, Appellant was placed on a second IP for the following school year.[8]

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[3] Notwithstanding the positive remarks, the June 28, 2018 Evaluation Form identified that Appellant needed coaching/development in the following areas: "instructional leadership, curriculum and instruction, Human Resources, and community and stakeholder relationships."

[4] The June 20, 2019 Evaluation Form noted that Appellant needed improvement in the following areas: "sets and communicates high standards for instructional quality and student achievement, demonstrates proficiency in analyzing research and assessment data, develops and/or evaluates instructional programs/classes, manages conflict and crisis situations in an effective and timely manner."

[5] Placing employees on IPs when warranted is standard practice in the District. HR works closely with District principals on issuance of IPs. All employees have the right to respond to any evaluation and IP with a written letter that is included in the employee's personnel file.

[6] Dr. Mack-Foxworth shared concerns regarding four incidents involving the Appellant: the Appellant did not record a message for teachers during teacher appreciation week, failed to attend the teacher appreciation luncheon, failed to pick up textbooks and had inappropriate conversations with staff members.

[7] Board Policy GBEB Staff Conduct requires that "all staff members shall treat each other with respect."

[8] Appellant's June 10, 2020 Evaluation indicated that improvement was needed in the areas: "promotes the principal's vision while collaborating with student, parent, and employee groups, instructional leadership, sets and communicates high standards for instructional quality and student achievement, demonstrates proficiency in analyzing research and assessment data, develops and/or evaluates instructional programs/classes, completes formal observation and evaluation procedures according to district expectations, staff development, leads staff development activities that promote the achievement of school goals and growth of students and staff, leads using the district's data protocol, and

At the end of the 2020-2021 school year, Appellant received his annual evaluation wherein Mack-Foxworth indicated that Appellant had not met the stated goals of his 2019-2020 IP.[9] As a result, Appellant was placed on yet another IP for the ensuing 2021-2022 school year, entitled "Plan of Support for Growth." Appellant expressed disagreement with his annual evaluation and the correlating implementation of the IP, his contention was noted in his District file. Appellant refused to sign either his evaluation form or the newly issued IP.

Thereafter, on July 13, 2021, Appellant emailed Williams to request a meeting to discuss his evaluation, stating "my professionalism, character and integrity are in question once again" and "I simply have had enough." Appellant copied his wife, Sharon Pace (Mrs. Pace), on the email sent to HR. Shortly thereafter, on July 20, 2021, Appellant posted the following remarks on Twitter:

> Today starts my eternal war to continuously and always improve education for first our district, then our community, our state, our nation, and finally our shared world. I PROMISE to always be PREMIERE. I also forever promise to follow the advice of Baron Davis and Keith Price.

The next day, Appellant posted two additional tweets stating:

> The Mother Emanuel 9 and Richland 2 = God's Chosen People
> The time is now.... Black and White = Grey

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develops leadership capacity in others."

During the hearing, Ms. Pace discussed that Mr. Pace's frustration mounted after being placed on the second improvement plan. She described Mr. Pace frequently coming home frustrated and expressing that he felt misunderstood.

[9] Appellant's July 12, 2021 evaluation indicated that Appellant needed improvement in the following areas: "instructional leadership, sets and communicates high standards for instructional quality and student achievement, demonstrates proficiency in analyzing research and assessment data, develops and/or evaluates instructional programs/classes, engages in collaboration and leadership activities with employees, recognizes and effectively uses skills and strategies for problem solving, consensus building, conflict resolution, stress management, and crisis management, leads staff development activities that promote the achievement of school goals and growth of students and staff, leads using the district's data protocol, and uses coaching skills with employees (groups and individuals) effectively."

Ms. Pace testified that on the day of Mr. Pace's review he called her on his way home very upset. She recalled him stating "that he was at a loss of what it was specifically that he needed to correct to please them and to, you know, make this go away." She expounded that over the next couple of weeks he started to sleep less, spend a lot of time looking things up on the internet, and struggled to verbalize what he was thinking.

Black and White= God's Chosen People[10]

Appellant also replied to the July 20, 2021 tweet with a picture of the Mother Emanuel AME Church in Charleston (Mother Emanuel). On July 23, 2021, Appellant left a concerning voicemail for Myers in which he stated that he would "take her hand and lead her into the Promise land." Appellant's aforementioned communications were reported to law enforcement.[11] Additionally, several District staff members also sought and obtained restraining orders against Mr. Pace as a result of the Twitter posts.[12]

On July 23, 2021, Williams placed Appellant on administrative leave for "several recent inappropriate and threatening social media posts and communications allegedly made by you." She advised Appellant that the District would conduct a complete investigation of the allegations. Appellant was instructed not to return to the high school or any other school property without her prior permission and not to have any contact with employees, students, or parents (including in person, e-mail, telephone calls, or other communications) until the investigation was completed.

On August 10, 2021, Appellant ignored the instructions he had been given and sent a letter to the "family and community of Richland [C]ounty, Dr. Baron Davis, and Sheriff Leon Lott," apologizing for his communications. Following his apology, Appellant requested another meeting with HR. Appellant expressed to the HR department that the District was acting unprofessionally and that his "patience [was] growing thin." He was insistent upon a meeting with District staff as he hoped to "shed LIGHT on this whole matter," further noting that he had an "iceberg of evidence" about his concerns. An investigation into the matter ensued, culminating in the finding that Appellant had engaged in inappropriate communication towards his co-workers and had posted inappropriate social media content which elicited fear amongst his co-workers. The findings resulted in Appellant subsequently entering into a settlement agreement with the District

[10] This Twitter Post referenced a mass shooting in Charleston, South Carolina in which nine people were killed. Around the same time, Appellant also emailed District staff. Messages included an email that stated within the subject line "I NEED YOU MY FATHER...NOW PLEASE...IN THE NAME OF EMMAUS." The body of this message was the quote "No one can steal your thunder when you are the STORM."

[11] It appears from the record that the District worked with HR to provide notice of Appellant's Twitter posts to law enforcement

[12] The restraining orders were issued by the Lexington County Magistrate Court, respectfully, docket numbers 2021-OR-3210800034 and 2021-OR-3210800037.

to remain on leave through the 2021-2022 school year, after which point he agreed to resign from the District. On January 7, 2022, the Superintendent for Richland School District Two provided written notice of Appellant's resignation to the State Superintendent of Education.

On July 26, 2022, Appellant was notified in writing that the State Board would meet to consider possible disciplinary action regarding Appellant's South Carolina educator certificate. *See* S.C. Code Ann. § 59-25-150 (2020) (authorizing board to revoke or suspend a certificate for just cause). Appellant was notified of his right to a hearing, which he subsequently requested. On May 24, 2023, a hearing on the matter was held. Legal counsel represented Appellant, who testified on his behalf, along with his wife. Ms. Shawn Williams, the District's Senior Chief Human Resources Officer, Mack-Foxworth, and Myers testified on behalf of the Board, who was also represented by counsel. Based upon the record and testimony at the hearing, the hearing officer determined that there was substantial evidence that Appellant engaged in inappropriate communications and that he generated social media posts which elicited fear amongst his coworkers. The hearing officer further found that Appellant's intentions were irrelevant as the communications and posts were *prima facia* evidence of inappropriate conduct as they used religious imagery and commentary in a distorted, fearful manner. The hearing officer further found Appellant's reference to race significant as it affected the impact his communications and social media posts had on co-workers who were of another race. Furthermore, the hearing officer determined that the Twitter posts displayed a disordered thought process, and that the communications were in direct violation of District directives. Finally, the hearing officer noted that Appellant displayed no genuine remorse for his conduct. Based upon the foregoing, the hearing officer recommended that the State Board suspend Mr. Pace's educator certificate for a period of one year, and that Appellant be required to submit a safe-to-return-to-work letter from a licensed therapist prior to reinstatement.

On June 20, 2023, Appellant's counsel voiced objections to the hearing officers report and recommendations. In addition to the weight assigned to a variety of issues, Appellant's counsel objected to the hearing officer's reliance upon hearsay statements contained in the November 8, 2021 termination letter and restraining orders which were not introduced into evidence. Counsel further argued that Appellant's due process rights were violated when the hearing officer denied Appellant's request for a six-day extension to respond to its report and recommendations. On

August 8, 2023, the Board met and reviewed the full record, including the hearing officer's recommendation and Appellant's objections to the report. The Board found just cause for the permanent revocation of Appellant's educator certificates. The Board determined that there was substantial evidence showing that Appellant had engaged in underlying unprofessional conduct and that an Order of Permanent Revocation was necessary to ensure the health, safety, and welfare of students. The Board found particularly compelling that the Lexington County Magistrate's Court granted restraining orders against Appellant following a finding that Appellant committed "Harassment in the 1st or 2nd degree" for "electronic threats." The Board indicated that there was no evidence in the record that Appellant was undergoing psychiatric treatment such that the risk of similar conduct in the future would be eliminated or mitigated. The Board concluded that there was just cause to permanently revoke Appellant's educator certificates based upon evidence of his "unprofessional conduct" and "evident unfitness for position for which employed." S.C. Code Ann. § 59-25-160; S.C. Code Regs. 43-58 (2011). This appeal followed.

**ISSUES ON APPEAL[13]**

I. Did Richland School District 2/South Carolina Education Association/hearing officer/South Carolina State Board of Education err in requesting and conducting an in depth, unbiased, and neutral investigation into both Kenneth M. Pace, Jr., and Richland School District 2?

II. Did Richland School District 2/South Carolina Education Association/hearing officer/South Carolina State Board of Education err in requesting any further pertinent information from Richland County Sheriff's Department, Lexington County Sheriff's Department, Lexington County EMS, Lexington County Hospital, Rebound Behavioral Health Hospital, Lexington County Mental Health, or the South Carolina Inspector General's office?

III. Did Richland School District 2/South Carolina Education Association/hearing officer/South Carolina State Board of Education in issuing subpoenas of any other person or persons' that may have shed more in depth, unbiased, or neutral information pertinent to this case and the accusations made against Kenneth Maxwell Pace, Jr.?

IV. Did the South Carolina State Board of Education err in granting Kenneth Maxwell Pace, Jr. sufficient opportunity (time, i.e., 3 minutes) to appeal his case and the accusations made against him during the appeal hearing held on August 7, 2023, before the South Carolina State Board of Education?

[13] Appellant's issues are stated verbatim from the brief.

V. Did Richland School District 2/South Carolina Education Association/ Hearing Officer/South Carolina State Board of Education err in establishing and defining the true meaning of a threat as it pertains to both the case and accusations made against Kenneth Maxwell Pace, Jr.?

VI. Did Richland School District 2/South Carolina Education Association/ Hearing Officer/South Carolina State Board of Education err in acknowledging Kenneth Maxwell Pace, Jr's Civil Rights and Human Rights?

VII. Did Richland School District 2/South Carolina Education Association/ Hearing Officer/South Carolina State Board of Education err in acknowledging Kenneth Maxwell Pace, Jr's 1 "Amendment Rights?

VIII. Did Richland School District 2/South Carolina Education Association/ Hearing officer/South Carolina State Board of Education err in acknowledging Kenneth Maxwell Pace, Jr's Right to Due Process?

IX. Did the South Carolina Education Association err in fulfilling and completing the legal representation of Kenneth Maxwell Pace, Jr. in the accusations brought before him by Richland School District 2/hearing officer/South Carolina State Board of Education?

X. Did Richland School District 2/South Carolina Education Association/ Hearing Officer/South Carolina State Board of Education err in committing Defamation of Character with these false accusations made against Kenneth Maxwell Pace, Jr.?

## STANDARD OF REVIEW

The Court has jurisdiction over appeals from the State Board of Education, as provided for in sections 1-23-380 and subsection 1-23-600(D) of the South Carolina Code (Supp. 2023). In such cases, the Court sits in its appellate capacity under the Administrative Procedures Act (APA). *See* S.C. Code Ann. §§ 1-23-600(D) & (E). Absent alleged irregularities in agency procedure, the scope of the Court's review in appellate cases is confined to the record. *See* S.C. Code Ann. § 1-23-380(4).

Subsection 1-23-380(5) of the South Carolina Code (Supp. 2023) provides the standard of review to be utilized by appellate bodies, including the ALC, when reviewing agency decisions:

> The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions

are:

> (a) in violation of constitutional or statutory provisions;
> (b) in excess of the statutory authority of the agency;
> (c) made upon unlawful procedure;
> (d) affected by other error of law;
> (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

When sitting in its appellate capacity, the Court must apply the "substantial evidence" rule. *See e.g., Waters v. S.C. Land Res. Conservation Comm'n*, 321 S.C. 219, 467 S.E.2d 913 (1996); *Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 319 S.E.2d 695 (1984). A decision is supported by "substantial evidence" when the record as a whole allows reasonable minds to reach the same conclusion reached by the agency. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. 634, 321 S.E.2d 63 (Ct. App. 1984). The possibility of drawing two inconsistent conclusions from the evidence does not mean that the agency's conclusion was unsupported by substantial evidence. *Id.*; *see Waters*, 321 S.C. at 227, 467 S.E.2d at 917. The well-settled case law in this State has also interpreted the rule to mean that a decision will not be set aside simply because reasonable minds may differ on the judgment. *Lark v. Bi-Lo*, 276 S.C. 130, 276 S.E.2d 304 (1981). In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct and will be set aside only if unsupported by substantial evidence. *Rodney v. Michelin Tire Co.*, 320 S.C. 515, 518, 466 S.E.2d 357, 358 (1996) (*citing Kearse v. State Health and Human Serv. Fin. Comm'n*, 318 S.C. 198, 456 S.E.2d 892 (1995)). Thus, the party challenging an agency's action has the burden of proving convincingly that the agency's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (*citing Hamm v. AT & T*, 302 S.C. 210, 394 S.E.2d 842 (1994)). Furthermore, the reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (*citing Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984)). However, "[d]etermining the proper interpretation of a statute is a question of law, and [an appellate court] reviews questions of law de novo." *Palmetto Co. v. McMahon*, 395 S.C. 1, 3, 716 S.E.2d 329, 330 (Ct. App. 2011) (citation omitted).

## DISCUSSION

The Board may, "for just cause, either revoke or suspend the certificate of any person." S.C. Code Ann. § 59-25-150 (2004); *see also* S.C. Code Ann. Regs. 43-58 (providing the Board has the legal authority to revoke a certificate for, among other grounds, willful neglect of duty, **unprofessional conduct**, and dishonesty). "Just cause" is defined to mean any of the following: "(1) Incompetence; (2) Wilful neglect of duty; (3) Wilful violation of the rules and regulations of the State Board of Education; (4) **Unprofessional conduct**; (5) Drunkenness; (6) Cruelty; (7) Crime against the law of this State or the United States; (8) Immorality; (9) Any conduct involving moral turpitude; (10) Dishonesty; (11) **Evident unfitness for position for which employed**; or (12) Sale or possession of narcotics." S.C. Code Ann. § 59-25-160 (emphasis added). "No person's certificate may be either revoked or suspended unless written notice specifying the cause for either the revocation or suspension has been given to the person by the State Board of Education and a hearing has been afforded such person." S.C. Code Ann. § 59-25-170. Here, the Board determined that "just cause" existed to revoke Appellant's educator's certificate based upon evidence of **unprofessional conduct** and Appellant's **unfitness for the position for which he was employed**. See S.C. Code. Ann. § 59-25-160 (emphasis added).

In his brief, Appellant presents ten grounds for reversal of the Board's decision. The Court addresses Appellant's arguments in three overarching categories - due process allegations, substantial evidence, and deficient/unpreserved arguments.

*Due Process*

Issues I, II, III, IV, and VIII presents allegations that Richland School District 2/South Carolina Education Association/ Hearing Officer/South Carolina State Board of Education violated his due process rights. The Department suggests that Appellant's due process allegations are unpreserved for review as they were not raised to the Board.

As it applies to the actions of Richland School District 2/South Carolina Education Association, the record is devoid of any indication of Appellant having advanced any argument to the hearing officer regarding the investigation conducted by the Richland School District 2 and/or South Carolina Education Association. As such, the issue is unpreserved for this Court's review. *State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 94 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial judge. Issues

not raised and ruled upon in the trial court will not be considered on appeal.").

With respect to the actions of the Hearing Officer/South Carolina State Board of Education procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution." *Olson v. S.C. Dep't of Health & Envtl. Control*, 379 S.C. 57, 69, 663 S.E.2d 497, 503-04 (Ct. App. 2008) (citing *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). Procedural due process requires adequate notice, opportunity for a hearing, right to introduce evidence, and the right to confront and cross-examine witnesses. *Humellmantel v. Greenville Hosp. Sys.*, 303 S.C. 549, 553, 402 S.E.2d 489, 491 (1991); *see also* S.C. Code Ann. § 41-35-680 (2021) (the Department must provide parties "a reasonable opportunity for a fair hearing, after notice of not less than seven days ..."). Yet, in order to prove the denial of due process, a party must show that they have been substantially prejudiced by the administrative process.

On July 26, 2022, the Board provided Appellant with notice that the Board was considering disciplinary action against his educator certification by mail. In addition to receiving notice, Appellant requested and obtained legal counsel for a full hearing on the merits. During the hearing, Appellant's legal counsel was provided the opportunity to introduce any and all relevant evidence and to confront and cross-examine the Board's witnesses. Additionally, before rendering its final determination, the Board reviewed the full record, including Appellant's objections to the Hearing Officer's Report and Recommendations. With each tenant of procedural due process met, the Court is left to conclude that that Appellant has failed to show that he was substantially prejudiced by the administrative process. *Humellmantel v. Greenville Hosp. Sys.*, 303 S.C. at 553, 402 S.E.2d at 491.

*Substantial Evidence*

The Court interprets Issue V as essentially challenging whether there is substantial evidence in the record to support the Board's finding of just cause to revoke Appellant's educator certificates. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency). Appellant does not dispute having generated the Twitter posts nor that his actions may have caused fear amongst his co-workers. During the hearing, Williams

and Mack-Foxworth also each discussed the effects of Appellant's Twitter posts. Williams expressed concerns regarding the correlation between the statements, Emmanuel 9 and Richland 2. She further qualified that, "-- it was very concerning … church is supposed to be the most sacred place and to reference that to Richland Two was not something that we found to be professional." She further indicated that she was very concerned for her safety and security. Myers testified that the voicemail Pace left for her "made [her] nervous" and "she was very scared."[14] Similarly, Mack-Foxworth testified that she was terrified after learning of Appellant's Twitter posts. She stated, "knowing the significance of the Emanuel 9 … as a[n] African American female, that concerned and alarmed me tremendously." Moreover, Ms. Pace also expressed that the posted pictures caused her to question whether Mr. Pace was coherently thinking, further opining that Mr. Pace's posts were possibly driven from emotion and not necessarily a purposeful response. Myers and Mack-Foxworth also expressed discomfort in continuing to work with Appellant, indicating that a restraining order was specifically sought and obtained to ensure that Appellant would not go anywhere near either.

The Court acknowledges Appellant's indication that he did not intend to cause fear and that he was experiencing health issues at the time the statements were generated.[15] Nevertheless, when viewing the Twitter posts coupled with the discussion of Mack-Foxworth, Myers, and Williams regarding the manner in which the nature of Appellant's statements necessitated obtainment of restraining orders against Appellant as to ensure their safety, there is substantial evidence from which a reasonable mind could surmise that Appellant's conduct was unprofessional and that permanent revocation is necessary to ensure the health, safety and welfare of students. *Bilton v. Best W. Royal Motor Lodge*, 282 S.C. at 641, 321 S.E.2d at 68. The fact that

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[14] Myers indicated that she considered Pace a friend and colleagues yet became nervous when Pace stated he'd "take[her] by the hand and take her to the Promise Land." Myers interpreted "promise land" to refer to heaven and she assumed he was trying to threaten me."

[15] A review of the record indicates that Appellant apologized for his actions in writing and during the hearing he openly discussed his mental health breakdown on July 23, 2021. This mental health breakdown resulted in family members contacting law enforcement because of their concern for Appellant and the guns confiscated at the time of the incident by law enforcement that were not returned until a couple of months after this incident. Appellant's wife testified that during the July 23, 2021 incident it took seven law enforcement officers to remove Appellant from her mother's home and place him in the ambulance. Additionally, Appellant continued to reach out via email to District employees after he was instructed not to communicate with District employees and also posted questionable content on Twitter up on until one week before the hearing.

the record presents the possibility of drawing two inconsistent conclusions from the evidence does not prevent the Board's findings from being supported by substantial evidence. Based upon the foregoing, the Court concludes that there is substantial evidence in the record to support the Board's determination that just cause exists to permanently revoke Appellant's educator certificates, resp. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917. *McCormack. Milliken & Co. v. S.C. Employment Sec. Comm'n*, 321 S.C. 349, 350, 468 S.E.2d 638, 639 (1996) ("[O]n questions of witness credibility we defer to the judgment of the agency.").

*Unpreserved Issues*

The Court concludes that Appellant's remaining arguments, Issues VI, VII, IX, and X are unpreserved for this Court's review. The South Carolina Administrative Law Court Rules requires an Appellant to address the issues presented with a discussion and citation to authority. SCALC Rule 37(B)(3). Moreover, "[u]pon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals." SCALC Rule 38.

The arguments pertaining to the aforementioned issues are woefully deficient and non-compliant with this Court's rules. First, Appellant failed to present any coherent legal argument or citation to authority for why the Department's decision was in error. *See* SCALC Rule 37; *see also, Potter v. Spartanburg School Dist.* 7, 395 S.C. 17, 24, 716 S.E.2d 123, 127 (Ct. App. 2011) ("An issue is deemed abandoned if the argument in the brief is not supported by authority or is only conclusory."). Additionally, the body of Appellant's argument offers no more than conclusory statements. *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (citation omitted) ("[S]hort, conclusory statements without supporting authority are deemed abandoned on appeal and therefore not preserved for [appellate] review."); see SCALC Rule 37(B)(3) (setting forth the requirement that issues argued in appellate briefs be followed by "a discussion and citation of authority). "South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review." *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81 557 S.E.2d 689, 691 (Ct. App. 2001). Moreover, even if the Court could discern the arguments which Appellant is attempting to advance, as noted by the Respondent in its reply brief, the issues stated on appeal were neither raised nor ruled upon by the Board. *State v. Dunbar*, 356 S.C. at

142, 587 S.E.2d at 693-94. Our courts have consistently pronounced that issues must be raised to and ruled upon the by trial judge to be preserved for appellate review. *Wilder Corp. v. Wilkie*, 330 S.C. 71, 76 497 S.E.2d 731, 734 (1998). Accordingly, the Court concludes that the issues Appellant's arguments are abandoned and are not preserved for review. *Id.*

**CONCLUSION**

The Court recognizes it is Appellant's belief that he has been treated unfairly, nonetheless the Court is bound by its statutory standard of review. It is the Appellant's burden of proving convincingly that the Board's decision is unsupported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917. Here, Appellant has failed to meet that burden. Section 59-25-150 of the South Carolina Code (2020) provides that the State Board has legal authority to revoke or suspend an educator's certificate for just cause. "Just cause" includes the "willful violation of the rules and regulations of the State Board of Education," "unprofessional conduct," and "evident unfitness for the position for which one is employed." S.C. Code Ann. § 59-25-160 (2020). A sanction is not unwarranted, excessive, or otherwise the result of an abuse of discretion when the sanctions are supported by evidence and well within the scope of the Board's conferred discretion. *See Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-185, 332 S.E.2d 539, 541 (Ct. App. 1985) ("A decision is arbitrary if it is without a rational basis, is based alone on one's will and not upon any course of reasoning and exercise of judgment, is made at pleasure, without adequate determining principles, or is governed by no fixed rules or standards.").

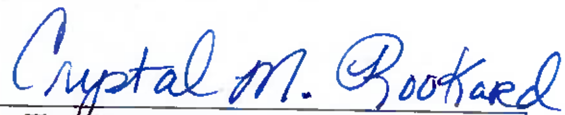
Substantial evidence supports that the sanction imposed by the State Board was within the confines of what was permitted under sections 59-25-150 and -160 of the South Carolina Code. Appellant acknowledged that he made inappropriate communications and social media posts. The Lexington County Magistrate Court issued a restraining order based on Appellant's inappropriate conduct. It does not appear that the factual findings are in dispute in this case but rather, the conclusions to be drawn from them. The Board, not this court, possesses the authority to evaluate and weigh the evidence. The Board considered all materials presented to them and relied upon substantial evidence to support their decision. The reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact. Grant, 319 S.C. at 353, 461 S.E.2d at 391 (*citing Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318

S.E.2d 365, 367 (1984)). The Court finds substantial evidence exists in the record to support the Board's revocation of Appellant's certificates. *See Friends of the Earth*, 387 S.C. at 366, 692 S.E.2d at 913 (holding a decision is supported by substantial evidence when the record as a whole allows reasonable minds to reach the same conclusion as the agency); *Hill v. S.C. Dep't of Health & Env't Control*, 389 S.C. 1, 10, 698 S.E.2d 612, 617 (2010) ("The mere possibility of drawing two inconsistent conclusions from the evidence does not prevent a finding form being supported by substantial evidence).

**ORDER**

**THEREFORE, IT IS HEREBY ORDERED** that the South Carolina Department of Education's Order of Revocation is **AFFIRMED**.

**AND IT IS SO ORDERED.**



The Honorable Crystal M. Rookard
South Carolina Administrative Law Judge

May 31, 2024
Columbia, South Carolina

## CERTIFICATE OF SERVICE

I, Shanice Hagood, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

**Shanice Hagood**
Judicial Law Clerk

May 31, 2024
Columbia, South Carolina