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

| Austin Bischoff,<br><br>Appellant,<br><br>v.<br><br>South Carolina Department of Education,<br><br>Respondent. | Docket No. 24-ALJ-30-0362-AP<br><br>**ORDER DENYING PETITION FOR REHEARING** |
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SC Court of Appeals

**STATEMENT OF THE CASE**

This matter is before the South Carolina Administrative Law Court ("Court") pursuant to an appeal filed by Austin Bischoff ("Appellant") on October 3, 2024.[1] Appellant challenges a decision issued on September 3, 2024 by the South Carolina Department of Education's State Board of Education ("Department" or "Respondent") suspending his educator certificate.

This matter was assigned to the undersigned on October 7, 2024. On October 11, 2024, the Department filed the Record on Appeal. On November 7, 2024, Appellant requested an extension of time to file his brief, which was initially due on or before November 11, 2024. The Department did not oppose the request and, on November 7, 2024, the Court granted a 30-day extension.[2] On December 9, 2024, Appellant filed his initial brief and a Motion to Supplement the Record on Appeal. The Court received no response to the motion from the Department. However, the Department did file its brief on January 3, 2025. Appellant filed his reply brief on January 13, 2025. On January 21, 2025, the Court granted Appellant's motion and offered the Department an opportunity to amend its brief. The Department filed a letter on January 29, 2025 informing the Court it elected to not submit an amended brief.

The Court issued an Order affirming the decision of the South Carolina State Board of Education on March 6, 2025. On March 17, 2025, Appellant filed a Motion for a Rehearing. As of the date of this Order, the Department has not responded to the motion.

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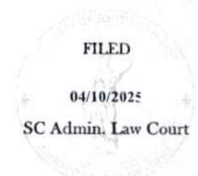
[1] The Court has jurisdiction in this matter under S.C. Code Ann. §§ 1-23-380, -600(D)&(E)(Supp. 2024) and 59-25-260(2020).

[2] The thirtieth day fell on Saturday, December 7, 2024 and the deadline was automatically extended to Monday, December 9, 2024 pursuant to SCALC Rule 3(A).



## I. Misapplication of *Jones v. Flowers*

Within this heading, Appellant enumerates five arguments. These arguments are: (1) a failure to properly apply the "additional reasonable steps" requirement; (2) misinterpretation of the "reasonably calculated" standard; (3) inadequate follow up measures by the Department; (4) improper reliance on inapplicable legal standards; (5) overlooking evidence supporting due process violations.

Appellant argues that the Court failed to properly apply the "additional reasonable steps" requirement established in *Jones v. Flowers*. In *Jones*, the United States Supreme Court held that when a mailed notice of a tax sale is returned unclaimed, a state, as a matter of due process, must, if practicable, take additional reasonable steps to attempt to provide notice to the property owner before conducting a tax sale. *Jones*, 547 U.S. 220, 226-27 (2006). Appellant contends that while the Court recognized that misdelivery of the certified letter triggered the additional steps requirement, the Court failed to enforce this requirement.

The Court does not agree with Appellant. Its prior Order does not contain a discussion of or endorse the "additional reasonable steps" requirement established in *Jones*. The absence of a discussion of this requirement in the Court's prior Order stems from the fact that the Court did not conclude that the Department's efforts to provide notice to Appellant using a certified letter comported with due process in this case. The Court's ruling instead was that the Department's additional attempt to provide notice by simultaneously sending another copy of its letter to Appellant in the regular mail satisfied due process. There was no evidence that the copy of the letter sent by regular mail was returned unclaimed, and, as a result, the "additional reasonable steps" requirement was not triggered.

Appellant also contends that the Court misinterpreted the "reasonably calculated" standard. He argues that merely resending notices via regular mail without any effort to confirm receipt or explore alternative methods does not satisfy the requirement that the means of communication must be reasonably calculated to provide notice. Again, the Court disagrees with Appellant. The Court did not conclude that the Department satisfied due process by "resending" notices by regular mail. Had the Department actually resent a notice, then it would have taken an additional reasonable step to notify Appellant, something Appellant specifically contends was not done. The Department instead sent both a certified letter and a letter via regular mail at the same time. To the extent that Appellant attempts to argue more generally that sending a letter by regular mail is

adequate notice. There is no evidence that the letter sent simultaneously by regular mail was returned, making the Court's citation to the above authorities proper.

The Court also disagrees with Appellant's contention that it misapplied S.C. Code section 59-25-260, which provides that:

> *The findings of fact by the State Board of Education are final and conclusive. A person aggrieved by the order of the State Board of Education, within thirty days, may appeal to the Administrative Law Court as provided in Sections 1-23-380(B) and 1-23-600(D), to review errors of law only, by filing with the Administrative Law Court and the State Board of Education notice of appeal.* The State Board of Education shall file a certified copy of the record with the Administrative Law Court in accordance with its rules of procedure. An appeal from the order of the Administrative Law Court must be taken in the manner provided by the South Carolina Appellate Court Rules.

S.C. Code Ann. § 59-25-260 (2020) (emphasis added). Appellant argues that deference to the Board's factual findings under section 59-25-260 does not extend to findings unsupported by any evidence or to legal conclusions based upon those flawed findings.

Appellant cites no authority for this proposition, but, in any event, the Court agrees generally with Appellant that deference does not extend to factual findings unsupported by any evidence. As the Court stated in its original order, it construed this standard to mean that factual findings will not be disturbed if there is any evidence in the record which would support those findings, or, stated differently, cannot be disturbed unless there is no evidence reasonably supporting such findings. The flaw in Appellant's argument here is again that he fails to recognize that the Department initially attempted to notify him in two ways: (1) a certified letter; and (2) a letter sent by regular mail. Had the Department only attempted to notify Appellant by certified letter, the Court would have reversed the determination of the Board and remanded for additional proceedings. The Court, however, concluded that the alternate method of notice met the minimum requirements for due process.

Appellant's final point in his initial argument is that the Court overlooked evidence that his due process rights were violated because he did not receive adequate notice. He asserts that the Department failed to explore alternate methods of service after "the initial attempts failed due to their errors in notifying Mr. Bischoff." This argument ignores the fact that the notice sent by regular mail was not returned and no error in service is associated with this initial notification.

certain procedural safeguards which are designed to protect individuals in administrative proceedings.

The Court disagrees with Appellant's first argument that the Court's refusal to accept the Department's findings regarding the certified letter are inconsistent with its ultimate ruling. Again, the Court did not conclude that the Department's efforts to notify Appellant using a certified letter comported with due process. The Court instead ruled that the Department's mailing of a second letter by regular mail at the same time it sent the certified letter satisfied due process. Accordingly, there is no inconsistency.

Appellant next contends that certain procedural safeguards were disregarded. According to Appellant, these safeguards are found in S.C. Code sections 59-25-170, 59-25-200, State Board of Education Rule BCAF, and particularly section 4(C) of this rule, and the Administrative Procedures Act. The Court cannot take action upon this argument for two reasons: (1) it does not discuss which provisions of these rules Appellant claims to have been violated and the manner in which they were violated, with the result that Appellant fails to identify with particularity any points overlooked or misapprehended by the Court;[7] and (2) Appellant did not make these arguments in his brief on appeal, and, as a result, they cannot be raised in a petition for rehearing.[8]

**V. Constraints of S.C. Code Section 59-25-260.**

Appellant again takes issue with the Court's construction of S.C. Code Section 59-25-260. He argues that the Court was not required to defer to any of the Board's findings below. The Court did eschew some of the Board's findings but concluded that there was *some* evidence in support of the remaining findings and, as a result, deference was required. Appellant's argument has been otherwise addressed above.

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[7] An argument exists that the notice sent by regular mail was improper because registered or certified mail is required by statute. The Court does not address whether that argument would have been successful. However, this argument was not made below until Appellant filed his reply brief and it would have been improper for the Court to inject into the appeal a non-jurisdictional argument which had not been raised by the parties. The due process implications of the notice sent by regular mail were all that the Court considered in its initial ruling. As the Court noted in its initial order, the outcome of this case is harsh for Appellant, and, were the Court free to make its own findings of fact, it may have decided the matter differently. Unfortunately, the matter is before the Court in the posture of an appeal and as a result, the Court is required to accept certain findings made by the Board and is limited to addressing the specific arguments made by the parties.

[8] Appellant did previously generically assert that he was entitled to notice pursuant to S.C. Code Section 59-25-170. The Court does not disagree with the conclusion. However, the Court has ruled that the letter mailed by regular mail satisfied due process and due process concerns were the only concerns properly addressed to the Court in this appeal.

Appellant identifies three alleged flaws in the notification process. First, he complains that the initial certified mail notice was known to be misdelivered. Second, he contends that there is no proof of delivery for the regular mail notice dated November of 2023. Third, he contends that there is no proof of delivery for the July 31, 2024 letter. The first and third of these arguments have previously been addressed above, and, the second argument is flawed. As the United States Supreme Court stated in *Jones*:

> Due process does not require that a property owner receive actual notice before the government may take his property. *Dusenbery, supra*, at 170, 122 S.Ct. 694. Rather, we have stated that due process requires the government to provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

*Jones*, 547 U.S. at 226. Because actual notice is not required to satisfy due process, proof of delivery is also not required where, as here, only due process is challenged.

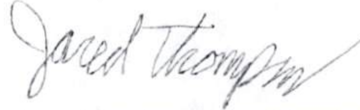
Appellant next argues that the Department's actions contravene *Meier v. Sunz Ins. Co.*, 2023 WL 123456 (S.C. 2023). The Westlaw citation to case number "123456" is highly suspicious. The Court's own independent research revealed no case involving the parties named in the case citation, and it appears that this case is fictitious.

The Court therefore rejects Appellant's argument in this regard. It is likely that Appellant employed argument generated by an artificial intelligence (AI) program which contained the fictitious case citation and cautions Appellant that many harms flow from the use of non-existent case citations and fake legal authority generated by AI programs, including but not limited to the waste of judicial resources and time and waste of resources and time of the opposing party. Were courts to unknowingly rely upon fictitious citations, citizens and future litigants might question the validity of court decisions and the reputation of judges. If, alternatively, Appellant's use of a fictitious case was not the result of using an AI program, but was instead a conscious act of the Appellant, Appellant's action could be deemed a fraud on the Court. **Appellant is hereby expressly warned that submission of fictitious case authorities may subject Appellant to sanctions under the S.C. Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10(Supp. 2024).**

Appellant's next argument is that the Department's decision is not supported by substantial evidence. Appellant relies upon a finding by this Court that there is no evidence which reasonably supports the Board's finding that the certified letter was addressed to Appellant at his Georgia

CERTIFICATE OF SERVICE

I, Jared Thompson, hereby certify that I have on 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).



Jared Thompson
Judicial Law Clerk

April 10, 2025
Columbia, South Carolina