

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Austin Bischoff,

Appellant,

v.

South Carolina Department of Education,

Respondent.

Docket No. 24-ALJ-30-0362-AP

FINAL ORDER AND DECISION

RECEIVED

May 12 2025

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.

After careful consideration of the parties’ submissions and arguments, the Court affirms the Order of Suspension of the South Carolina State Board of Education.

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).



BACKGROUND

Appellant obtained a South Carolina professional educator certificate from the Department and previously worked as a special education school psychologist for the Aiken County Public School District. Following the District's investigation of some employment issues, Appellant resigned on March 3, 2022.³ In an undated letter, received by the Department on March 14, 2022, the District Superintendent notified the Department of Appellant's situation pursuant to Department regulation 43-58.1

On November 29, 2023 the Department prepared a letter to be sent "Via Regular and Certified Mail – Return Receipt Requested – Restricted Delivery" to Appellant. The Appellant's address on the face of the letter is in Grovetown, Georgia.⁴ A second copy of the same letter was sent by regular mail. The letter states it is to give notice of the State Board of Education meeting to decide possible disciplinary action affecting Appellant's certificate. The letter goes on to state in part:

Under state law, you are entitled to a hearing in this matter. If you wish to request a hearing, your request must be in writing, and addressed to Ellen E. Weaver, State Superintendent of Education, 1429 Senate Street, Suite 1015, Columbia, South Carolina 29201. You may request a public or private hearing. At the hearing, you may present any testimony under oath or other evidence that may be pertinent, and you may be represented by legal counsel. If you fail to make a written request for a hearing within fifteen days after you receive this notice, you will waive your right to a hearing. In the event that you waive your right to a hearing, the State Board may take action to suspend or revoke your certificate based on the information presented by the State Department of Education (SCDE).

The State Board of Education's Procedures for Educator Certification Hearings can be found on the SCDE website at [...]. If you do not have access to a computer, please contact our office and we will mail you a copy of the State Board of Education's Procedures for Educator Certification Hearings.

³ The actions of the Aiken County Public School District are not the matter before the Court and are therefore not specifically detailed in this order

⁴ Appellant had previously resided in Aiken, South Carolina but indicated on his Notice of Appeal that his current address is the same address in Grovetown, Georgia. The Department used third-party computer software to locate the Grovetown, Georgia address before sending its correspondence.

The Department included in the record a United States Postal Service tracking report for the copy of the November letter sent by certified mail and the report indicated the letter was “delivered to an individual at the address” and “Delivered, Left with Individual” in Aiken, South Carolina on December 2, 2023.

A letter from Howard Brown, a Consumer Affairs Manager with the United States Postal Service (“USPS”) indicated that the November 2023 letter was misdelivered. The USPS letter references the same tracking number included on the Department’s November certified letter and apologizes for misdelivery. It states in part:

Based on our investigation, the letter was delivered to 1103 Churchill Circle, Aiken, SC, on December 2, 2023, despite a change of address having been initiated. It appears that our carrier failed to forward the letter to your updated address as required and instead delivered it to the original address. Furthermore, the Proof of Delivery includes a scribbled signature, suggesting that our standard procedures for Certified mail delivery may not have been properly followed.

Attached to the USPS letter is another tracking report listing the Aiken address and an illegible signature of recipient. That tracking report also indicates “Extra Services: Certified Mail.”

On July 31, 2024, the Department prepared a letter to be sent to Appellant. The body of the letter identifies Appellant’s address as Grovetown, Georgia. This letter states:

This letter is in follow up to the other certified mail letter we have tried to bring to your attention, in an effort to make you aware of your rights and afford you due process regarding the possible suspension of your South Carolina educator certificate based on the provisions of S.C. Code Ann. § 59-25-160 (2020). The State Board will review allegations of falsification of special education documentation with the Aiken County Public School District.

You have been notified that, under state law, you are entitled to a hearing in this matter and the requirements of requesting the same if you so desire. Under the South Carolina Rules of Civil Procedure 5(b), you have been given fair notice of constitutional due process. You have failed to make a written request for a hearing, and your failure to accept the certified mail and/or respond to the notification sent to you by the U.S. Regular Mail is considered a waiver of your right to a hearing. The State Board could take action to suspend your certificate based on the information presented by the State Department of Education (SCDE).

The State Board will consider this matter on August 13, 2024, at approximately 10:00 a.m., or as soon thereafter as is feasible.

Unlike the heading on the November 2023 letter from the Department to Appellant, this July 2024 letter does not indicate it was mailed with any special delivery or tracking features.

The South Carolina Board of Education conducted a hearing on September 3, 2024 and Appellant was not present. The Board then issued a written order to suspend Appellant's educator certificate for a period of two years (September 3, 2024 to September 2, 2026). In the Board's order, the summary of the case stated in part:

On November 29, 2023, the South Carolina Department of Education (SCDE) sent Austin Bischoff a notice via regular and certified mail of this right to a hearing regarding the possible suspension of his South Carolina educator certificate. The SCDC has verified Mr. Bischoff's address, the certified letter was returned unclaimed, and the letter sent via regular mail has not been returned. On July 31, 2024, the SCDE informed Mr. Bischoff via regular mail that the State Board would meet on August 13, 2024, or as soon thereafter as is feasible, to consider action against his educator certification. Under the South Carolina Rules of Civil Procedure 5(b), Mr. Bischoff has been given fair notice of constitutional due process. He has not contacted the SCDC to request a hearing and is now in default.

Appellant indicates in his brief that he first learned of the suspension on September 5, 2024.

On September 13, 2024, Appellant, through counsel, filed a Motion to Reconsider asserting the Department's initial and follow up notices were erroneously mailed to his former address in Aiken, South Carolina. The motion asked that the Board rescind its order and "allow this educator to have a full merits hearing on the underlying issues." On September 24, 2024, counsel for the Department wrote to Appellant's counsel to provide a response to Appellant's Motion to Reconsider and ultimately denied the motion. The body of the letter stated in part:

The motion was reviewed by the SCDE's Office of General Counsel (OGC). After reviewing the SCDE's own records, it was found that the November 29, 2023, Notice and the July 31, 2024, Final Notice were sent to Mr. Bischoff's proper address in Grovetown, Georgia. Copies of both notices are enclosed for your records.

It was further noted that although Mr. Bischoff states he changed his address in the Educator Portal prior to December 2, 2023, the system

data shows that the address was not updated until April 22, 2024. The SCDC was able to obtain the correct address using a public look-up software for legal compliance.

Due to the inconsistencies between the information provided in the motion and what is in the SCDE's record, the OGC has deemed it unnecessary to present the matter to the State Board of Education. The final order issued on September 3, 2024, should be considered the agency's final action in this matter. As noted in the motion, the matter is appealable to the SC Administrative Law Court.

ISSUES ON APPEAL

Appellant raises the following six issues in his brief:

1. Did the Aiken County Public School District Fail to Provide Adequate Support and Training?
2. Did the Aiken County Public School District Fail to Properly Handle Mr. Bischoff's Performance Concerns?
3. Did Mr. Bischoff Comply with the 60-day Evaluation Timeline as Indicated by the South Carolina Department of Education?
4. Did the Aiken County Public School District's Lack of Ongoing Support Lead to Mr. Bischoff's Resignation?
5. Did the South Carolina Department of Education Deny Mr. Bischoff his right to Due Process by Not Providing Mr. Bischoff Fair Notice of His Constitutional Due Process?
6. Since Leaving the Aiken County Public School District, Did Mr. Bischoff Rehabilitate Himself and Continue to Display Professional Conduct within the Scope of His Duties as an Educator?

STANDARD OF REVIEW AND JURISDICTION

The Respondent is an "agency" under the Administrative Procedures Act (APA). See S.C. Code Ann. §§ 1-23-310(2), -505(2), and -600(A) and (E)(Supp. 2024). Accordingly, the APA's standard of review governs appeals from decisions of the Department. See *Id.* §§ 1-23-380 & -600(E) (Supp. 2024). The normal standard used by appellate bodies to review agency decisions is provided by Section 1-23-380(5) of the South Carolina Code (Supp. 2024). See also § 1-23-600(E) (directing administrative law judges to conduct appellate review in the same manner prescribed in § 1-23-380).

However, in this case, a special statute governs appeals involving the revocation or suspension of teaching certificates, and the special statute controls. *See Mims v. Alston*, 312 S.C. 311, 313, 440 S.E.2d 357, 358–59 (1994) (special statute governing appeal from an involuntary commitment order of the probate court controlled over more general statute governing appeals from probate court). That statute is section 59-25-260:

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).

As the italicized language indicates, on appeal to the Administrative Law Court, the Court must consider the findings of fact made by the Board to be “final and conclusive” and should review “errors of law.” With respect to factual matters, this standard has been construed in other contexts 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. *See, e.g., Seago v. Horry County.*, 378 S.C. 414, 422, 663 S.E.2d 38, 42 (2008) (standard of review in action tried without a jury); *Clear Channel Outdoor v. City of Myrtle Beach*, 360 S.C. 459, 466, 602 S.E.2d 76, 79 (Ct. App. 2004), *aff’d*, 372 S.C. 230, 642 S.E.2d 565 (2007) (appeal from zoning board). The Court concludes that this standard is the appropriate standard of review in this matter.

DISCUSSION

The Court views Appellant’s fifth issue – whether due process was violated because he lacked notice of the proceedings against him in time to appear – as the central issue in this case, and, therefore, the Court will address it first. The Board’s decisions contain the following factual findings relevant to this inquiry:

- On November 29, 2023, the South Carolina Department of Education (SCDE) sent Austin Bischoff a notice via regular and certified mail of his right to a hearing regarding the possible suspension of his South Carolina educator certificate.
- The SCDE has verified Mr. Bischoff's address, the certified letter was returned unclaimed, and the letter sent via regular mail has not been returned.
- On July 31, 2024, SCDE informed Mr. Bischoff via regular mail that the State Board would meet on August 13, 2024, or as soon thereafter as is feasible, to consider against his educator certificate.

Appellant challenges these factual findings made by the Board. As previously discussed, however, the Court cannot disturb a factual finding made by the Board if there is any evidence which reasonably supports the finding. This standard is a high standard, one more favorable to the Department than even the substantial evidence standard.

Viewed through this lens, the Court rejects certain findings by the Department. The Court is not compelled to accept and does not accept the Board's findings that the notice sent by certified mail was returned and that the notice sent by certified mail was sent to Appellant at his Georgia address. The evidence submitted by Appellant from the United States Postal Service, which was added to the record without objection from the Department, unequivocally demonstrates that the notice sent by certified mail was delivered to the Aiken address where the return receipt was signed by an unknown person. There is no evidence in the record that this letter was ever returned to the Department. Additionally, had the letter sent by certified mail been addressed to Appellant in Georgia, it would not have been delivered to his prior address in Aiken. There is no evidence which reasonably supports the Board's findings to the contrary.

However, other findings by the Department regarding notice must be treated differently. The record contains a copy of a letter dated November 29, 2023 which indicates it was sent via both regular and certified mail. The address listed on the letter was Appellant's correct address in Georgia. Appellant had instituted mail forwarding from his prior Aiken address to his Georgia address prior to the mailings sent by the Department and there was no evidence in the record that either mailing sent by regular mail was returned to the Department. As a result, the Court must accept as conclusive the Board's findings that it sent by regular mail to Appellant's Georgia address both a notice that a proceeding involving his education credential had been commenced

and that he had a right to request a hearing in writing and a subsequent letter notifying Appellant that he had been deemed to have waived such a hearing and that the Board could consider action against his credential in August of 2024.⁵

In summary, the Court must evaluate Appellant's contention that his due process rights were violated because the Board held a hearing without affording him proper notice assuming that the Board sent an initial notice to Appellant in Georgia via regular mail.⁶ "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." *Kurschner v. City of Camden Planning Comm'n*, 376 S.C. 165, 171, 656 S.E.2d 346, 350 (2008). "When the State seeks to revoke a professional license, procedural due process rights must be met." *Zaman v. S.C. State Bd. of Medical Examiners*, 305 S.C. 281, 284, 408 S.E.2d 213, 215 (1991). Specifically, the South Carolina Supreme Court has recognized the liberty and property interests an educator has in a professional license and that "procedural due process requirements must be met." *Brown v. S.C. State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990). "Due process requires (1) adequate notice;⁷ (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007).

⁵ The fact that the address on the initial notice letter sent by certified mail reflected a Georgia address but was nevertheless delivered to Aiken does raise the possibility that the initial notice sent by regular mail was also placed in an envelope with the Aiken address. However, there is no evidence from the postal service regarding this letter and there is no evidence that this letter was returned to the Department. Given the limited scope of review with respect to factual findings by the Board, the Court cannot overturn findings related to the notice letters sent by regular mail.

⁶ In his reply brief, Appellant raises the argument that the November 29, 2023 notices were not sent by certified mail, restricted delivery, as required by the Department's Procedures for Educator Certification Hearings. This is an argument based upon compliance with applicable rules rather than one based upon due process. It is unclear to what extent the procedural rules are binding as they are not contained in either a statute or regulation, but, in any event, this argument is not preserved for review because it was raised for the first time in Appellant's reply brief and was not ruled upon by the Board below. *Simmons v. SC STRONG*, 402 S.C. 166, 173 at n. 2, 739 S.E.2d 631, 635 at n. 2 (Ct. App. 2013); *see also Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691-92 (2010) (holding an issue is not preserved for appellate review if it was not ruled upon by the Appellate Panel); *Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 692 (Ct.App.2001) (holding an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief).

⁷ Notice is also required by statute. S.C. Code Ann. § 59-25-170 (2020) ("[n]o 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").

In mounting a due process challenge, the Appellant must show substantial prejudice resulted. *Palmetto Alliance, Inc. v. S.C. Public Service Comm'n*, 282 S.C. 430, 435, 319 S.E.2d 695, 698 (1984). Lack of notice can constitute substantial prejudice. *Porter v. S.C. Public Serv. Comm'n*, 338 S.C. 164, 170, 525 S.E.2d 866, 869 (2000); *Cameron & Barkley, Co. v. S.C. Procurement Review Panel*, 317 S.C. 437, 441, 454 S.E.2d 892, 894 (1995). Due process, however, does not require that a person receive actual notice. *Jones v. Flowers*, 547 U.S. 220, 226 (2006). Rather, it requires only that notice be given in a manner reasonably calculated to apprise one of the pendency of the action and afford him or her an opportunity to present objections. *Id.* at 226.

The United States Supreme Court has held that mail service satisfies this requirement. *E.g., Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988) (“[w]e have repeatedly recognized that mail service is an inexpensive and efficient mechanism that is reasonably calculated to provide actual notice”); *see also Taylor v. Taylor*, 672 A.2d 44, 50 (Del. 1996) (notice of a modification petition, sent by *regular* mail to a non-resident obligor's last known address, is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection) (emphasis in original); *First Resol. Inv. Corp. v. Seker*, 795 A.2d 868, 872-73 (N.J. 2002) (due process is satisfied when a defendant is served by ordinary mail at his or her last known address). The November 29, 2023 notice sent by *regular mail* therefore satisfies due process. Because Appellant’s due process rights were not violated, the Board was authorized to proceed with its hearing.

This conclusion is dispositive of this appeal. All other grounds raised by Appellant relate to the merits of the Board’s decision to suspend Appellant’s credential, which are precluded from review by the default below. Appellant’s absence precluded these arguments from being raised to and ruled upon by the Board, and they are not preserved for review.

ORDER

IT IS THEREFORE ORDERED that the Department’s South Carolina State Board of Education September 3, 2024 Order of Suspension for Appellant’s educator certificate is **AFFIRMED.**⁸

AND IT IS SO ORDERED.

⁸ The Court recognizes that this result may be considered harsh, and, if the Court were free to find facts as it saw fit, the outcome of this case might be different. However, the Court is constrained by the standard of review and must accept certain findings of the Department as true and correct, even if the evidence is in conflict.



The Honorable Robert L. Reibold
Administrative Law Judge

March 6, 2025
Columbia, South Carolina

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

March 6, 2025
Columbia, South Carolina

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